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SOUTHERN DISTRICT OF NEW YORK

4 Case No. 13-13030-ma

6 | In the Matter of:

7

8 | RESIDENTIAL CAPITAL, LLC, et al.,

9

10 | Debtors.

11

13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 | August 14, 2012

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20

21 | B E F O R E:

22 HON. MARTIN GLENN

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1
2 (Doc no. 264, 856) Motion for Relief from Stay filed by Corla
3 Jackson.

4

5 (CC: Doc no. 801) Motion for Relief from Stay to Proceed to
6 Trial before California Superior Court, and, Motion to Extend
7 Time to Object to Discharge filed by Michael E. Holt on behalf
8 of Hitoshi & Wakana Inoue.

9

10 (Doc no. 877, 888) Motion for Relief from Stay filed by Alan
11 Moss.

12

13 (CC: Doc no. 462, 871) Motion for Relief from Stay filed by
14 Arlene M. Richardson on behalf of Mary Gardner.

15

16 Doc# 1020 Hearing RE: Debtors' Objection to Motion for
17 Reconsideration of Final Supplemental Servicing Order. (related
18 document(s)916, 774)

19

20 (Doc# 652, 767) Motion Of Green Planet Servicing, LLC For Entry
21 Of Order: (A) Modifying The Automatic Stay To Effectuate Pre-
22 Petition Termination Of Servicing Agreement; Or (B)
23 Alternatively, Granting Relief From The Automatic Stay To Allow
24 Post-Petition Termination Of Servicing Agreement; And (C)
25 Granting Related Relief (related document(s)652)

1

2 (Doc# 263, 882) Motion for Relief from Stay.

3

4 Doc# 810, 859, 861 Hearing on (I) Motion of the Federal Housing
5 Finance Agency Pursuant to the July 11, 2012 Order of the
6 Honorable Denise L. Cote Seeking Limited Discovery from the
7 Debtors and, if Necessary to that Purpose, Relief from the
8 Automatic Stay and (II) Supplement to July 17, 2012 Motion of
9 the Federal Housing Finance Agency Pursuant to the July 11,
10 2012 Order of the Honorable Denise L. Cote Seeking Limited
11 Discovery from the Debtors and, if Necessary to that Purpose,
12 Relief from the Automatic Stay (related document(s) 810, 859)

13

14 Doc# 894 Motion for Relief from Stay

15

16 (CC: Doc# 667) Motion for Relief from Stay - Motion of
17 Christina Ulbrich for Relief from Automatic Stay as to GMAC
18 Mortgage, LLC

19

20 (CC: Doc# 763) Application for FRBP 2004 Examination / Notice
21 of Motion and Motion of OneWest Bank for Order Pursuant to
22 Bankruptcy Rule 2004 Authorizing Rule 2004 Examination of
23 Homecomings Financial, LLC and Requiring Production of
24 Documents

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here in
3 Residential Capital, LLC, number 12-12020. Mr. Rosenbaum?

4 MR. ROSENBAUM: Good morning, Your Honor. Norm
5 Rosenbaum, Morrison & Foerster, for the debtors, here with
6 several of my colleagues. Your Honor, we have a fairly full
7 agenda this morning. I'm pleased to report, however, that
8 we've resolved several of the motions for relief that were
9 originally scheduled to be heard today, and are attempting to
10 resolve a few others. In total, I think I count seven matters
11 going forward today --

12 THE COURT: Okay.

13 MR. ROSENBAUM: -- for argument. And I'll just work
14 off the agenda, starting with the resolved matters, unless Your
15 Honor wants me to address anything --

16 THE COURT: No, go ahead.

17 MR. ROSENBAUM: -- okay. The first resolved matter is
18 number 1, it's on page 2 of the agenda, is the motion of
19 Vermont Housing Finance Agency for relief from the automatic
20 stay. This was a motion to foreclose -- authority to foreclose
21 on a senior lien where the debtors hold the junior lien. We
22 entered into a stipulation allowing this to go forward. It was
23 consented to by the committee, and we'll submit that to the
24 Court.

25 THE COURT: All right. I saw that proposed -- I

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1 received a number of the proposed orders this morning, and I
2 reviewed that, and the Court will approve it.

3 MR. ROSENBAUM: Thank you, Your Honor. The next
4 matter on the agenda was the application to retain Chadbourne &
5 Parke as counsel to the examiner. I believe that order has
6 already been entered.

7 THE COURT: Yes.

8 MR. ROSENBAUM: The third matter on the agenda is the
9 motion of Hitoshi and Wakana Inoue, again, for relief from the
10 automatic stay, to proceed with an action against the debtors.
11 We did enter into a stipulation allowing that action to go
12 forward, solely for determining any liability the debtors might
13 have to the Inoues for purposes of establishing their claim and
14 to assert any defenses they may have to a trustee's sale in
15 deed that closed. And we'll be submitting a stipulated order
16 on that as well.

17 THE COURT: And I've seen the stip; I have that order,
18 and that'll be approved likewise.

19 MR. ROSENBAUM: Thank you, Your Honor. The fourth
20 resolved matter is the motion of Hedeya Haroutounian. Again,
21 this was relief from the automatic stay, and we've also
22 submitted a stipulation allowing that action to go forward
23 solely to determine an appeal.

24 THE COURT: That'll be approved as well. Thank you.

25 MR. ROSENBAUM: Proceeding to the matters on which

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1 we're going forward today, Your Honor --

2 THE COURT: I thought there was one with State of New
3 York, as well.

4 MR. ROSENBAUM: Yes, there is. It was in the back of
5 the agenda. That is, again, a motion of the State of New York
6 to continue an action, it's entitled Empire State. Again,
7 we've consented to relief from the automatic stay to allow New
8 York State to proceed with that action.

9 THE COURT: Yes. I reviewed that. That's approved as
10 well.

11 MR. ROSENBAUM: Thank you, Your Honor. That brings us
12 to the contested matters on for today, Your Honor. The first
13 motion -- this is on page 5 of the agenda, Roman Numeral V,
14 number 1.

15 THE COURT: Yes.

16 MR. ROSENBAUM: This is Mr. Taggart's -- Kenneth
17 Taggart's motion for relief from the automatic stay. This is a
18 continued matter from July 10th. It's docket number 263. Mr.
19 Taggart is present in the courtroom and I would cede the podium
20 to Mr. Taggart.

21 THE COURT: All right, Mr. Taggart?

22 MR. TAGGART: Mr. Taggart for motion for -- I'm pro
23 se, so --

24 THE COURT: Yes, go ahead.

25 MR. TAGGART: -- please excuse me if I --

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1 THE COURT: That's fine. Go ahead.

2 MR. TAGGART: -- make any mistakes or give me advice
3 if you may.

4 Yeah, this is a continuation from the adjourned
5 meeting from, I think, it was July 14th. There was a
6 subsequent motion for two additional cases in federal court to
7 be heard today, which I withdrew the motions this morning for
8 those two cases. But we are continuing with the motion for
9 relief from stay from the state court, which is GMAC Mortgage
10 LLC v. Taggart.

11 THE COURT: Let me ask you, Mr. Taggart. You say you
12 withdrew the motion to lift the stay this morning. Is that
13 with respect to both federal -- because you had filed one pre-
14 petition federal court action in the Eastern District of
15 Pennsylvania. And then after the bankruptcy was filed, you
16 filed another damages action in the federal court in the
17 Eastern District of Pennsylvania. Is that what you have
18 referenced?

19 MR. TAGGART: Yes. Yes, that's been withdrawn.

20 THE COURT: And are you withdrawing those cases?

21 MR. TAGGART: I'm not withdrawing the cases, no, just
22 the motion for relief from stay.

23 THE COURT: So if I understand it, you went ahead, in
24 the face of the automatic stay, and you filed a damage action
25 in the Federal District Court in the Eastern District of

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1 Pennsylvania. Thereafter you made a motion to lift the stay to
2 permit you to proceed with that action, but now you've
3 withdrawn the motion to lift the stay. Do I understand that
4 correctly?

5 Let me try to explain it better. You understand
6 there's an automatic stay in place, and it prohibits anyone
7 from filing an action against the debtor in any court, state or
8 federal, anywhere in the United States; and in the face of
9 that, you went ahead and filed another action in Federal
10 District Court in the Eastern District of Pennsylvania? Do I
11 have that correct?

12 MR. TAGGART: I did --

13 THE COURT: Is that yes or a no?

14 MR. TAGGART: -- I did file an action, yes.

15 THE COURT: Okay.

16 MR. TAGGART: If I may respond? I was -- I filed that
17 and made a notation of the stay, that it was automatically
18 stayed. I'm pro se and I did not do it intentionally in
19 violation of the court or the stay.

20 THE COURT: I'm not sure I'm permitting you to
21 withdraw the motion to lift the stay to proceed with that,
22 because I may well go ahead and rule on that motion. Because
23 you filed the action in violation -- it's such a clear
24 violation of the automatic stay when you went ahead and filed
25 that action.

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1 MR. TAGGART: Yes, I misunderstood the -- I did
2 immediately file a relief from stay to not proceed any further,
3 just the filing. And I did make a notation.

4 THE COURT: But now you're leaving this action that
5 you filed in the federal court, having -- you say you've
6 withdrawn the motion. I'll decide whether it's withdrawn or
7 not. You may think you're withdrawing the motion to lift the
8 stay, but I'll hear from Mr. Rosenbaum about that.

9 But let's go on to talk about the state court
10 foreclosure action. Go ahead.

11 MR. TAGGART: The state foreclosure action, Your
12 Honor, GMAC did not file a notice with the court -- the
13 bankruptcy was filed May 14th, 2012. They did not file with
14 the court any notice of stay until June 6th, 2012, nearly three
15 weeks later, and that's only after I filed a motion with the
16 state court on June 4th, letting them know that there was a
17 bankruptcy involving GMAC, at which time GMAC filed their
18 motion and asserted of the thirty-two counts alleged against
19 them, counterclaims, that only one count could proceed and the
20 other thirty-one counts should be stayed at that point, of
21 course, at which time the court did so, and stayed those
22 counts. But GMAC proceeded with their case.

23 THE COURT: If I understand it, you moved in the state
24 court for a stay of the foreclosure action that GMAC filed
25 against you, and the state court denied that motion. Am I

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1 correct?

2 MR. TAGGART: I asked the state to -- they filed a
3 stay against my claims. I filed a stay with the court to stay
4 the entire case, both claims.

5 THE COURT: And on June 15th, 2012, the state court
6 entered an order summarily denying your motion for a stay. Am
7 I correct?

8 MR. TAGGART: Yes, I believe that's correct.

9 THE COURT: Okay, go ahead.

10 MR. TAGGART: There were several entries in the docket
11 from the time GMAC filed for bankruptcy until June 6th, and
12 from June 6th until now, there's been nineteen entries in the
13 docket. I haven't been able to proceed with any of my
14 counterclaims against GMAC.

15 THE COURT: For damages?

16 MR. TAGGART: Or even -- some of the -- I'm sorry.
17 Some of the claims for damages must be asserted with damages,
18 which actually are permitted in the order that was signed by
19 the Court that says that the damages must be -- if the claims
20 must be asserted with damages, they're permitted. And that's
21 actually the case. But GMAC asserted that thirty-one out of
22 the thirty-two claims should be stayed.

23 THE COURT: Let me ask you this. The debtors, in
24 their response to your -- in the supplemental filing that they
25 filed with this court -- because this came on for a hearing on

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1 July 10th --

2 MR. TAGGART: Yes.

3 THE COURT: -- and I directed that you and the
4 debtors' counsel try and work this out. You were unable to do
5 that.

6 MR. TAGGART: Yes.

7 THE COURT: I understand that. They filed an
8 additional filing, actually several. And the debtors have
9 offered to consent to a limited stay as follows: "The parties
10 may proceed through any dispositive motion practice in the
11 foreclosure proceeding, by which the trial court will determine
12 the viability of Mr. Taggart's alleged defenses to foreclosure,
13 in the foreclosure proceeding. Thereafter, Mr. Taggart would
14 have the opportunity to renew his motion by filing a notice of
15 hearing fourteen days in advance of the next available omnibus
16 hearing, to the extent that any of Mr. Taggart's counterclaims
17 remain that would otherwise be stayed by the supplemental
18 servicing order." That's in the debtors' supplement in further
19 opposition.

20 So what -- the difficulty I had the last time you were
21 here, not with your position, but really with the debtors'
22 position, they argued that none of the thirty-two
23 counterclaims -- I guess thirty-one of the thirty-two
24 counterclaims that you had asserted could not proceed as
25 defenses in the state court foreclosure action. And I raised

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1 with them, they hadn't briefed the issue. They just simply
2 made that argument, that none of those could be asserted as
3 defenses.

4 And after you went back and were unable to work it
5 out, they filed a supplement, and they also filed a memorandum
6 of law from the debtors' Pennsylvania counsel, Reed Smith. And
7 that addressed, in detail, applicable Pennsylvania state law as
8 to what could be asserted as a defense to foreclosure. But the
9 debtor, in my view, correctly agrees that the judge in your
10 foreclosure action should be the one to decide what can
11 properly be asserted as a defense under state law. Because
12 Pennsylvania law governs what are proper defenses to the state
13 court foreclosure.

14 So what's wrong with their position? They're saying
15 go ahead, Mr. Taggart; go back to the state court judge.
16 You've asserted thirty-two counterclaims. That judge will
17 decide which of those claims, if any can properly proceed as
18 defenses to foreclosure. Why isn't that the right result?

19 MR. TAGGART: That's -- I don't have a problem with
20 that, I just have -- the court had said that -- I'm citing a
21 decision just last week in Aurora by this court, that they're
22 using the sword and shield defense that, okay, they can proceed
23 in state court, but I have an issue with the monetary damages,,
24 if they're liable also for monetary damages, why that shouldn't
25 offset.

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1 THE COURT: They're not seeking monetary damages from
2 you in the state court foreclosure action. As I understand it,
3 and the state court judge will be one to determine this, it's
4 what's referred to as an *in rem* proceeding; that they can't get
5 a personal judgment against you. If they prevail, they'll get a
6 judgment of foreclosure with respect just to the real property,
7 but no personal judgment against you.

8 So their position is, they're not seeking monetary
9 damages from you. And they argue, they briefed, but I'll leave
10 it to a Pennsylvania judge to decide, that under Pennsylvania
11 law, in an *in rem* foreclosure proceeding, the court doesn't
12 decide any monetary damage issues. The judge in Pennsylvania
13 will decide what's a valid -- what may be a valid defense to
14 foreclosure. If any of your thirty-two counterclaims, under
15 Pennsylvania law, can be asserted as defenses, the judge in
16 Pennsylvania will decide that.

17 I mean, that's -- what's wrong with that -- that's the
18 position that the debtors have set forth in their supplement.
19 And they supported it with the memorandum of law from Reed
20 Smith that goes through and specifically talks about what
21 Pennsylvania law is. I don't have -- with this proposal to
22 send it back to the judge there, I'm not going to decide what's
23 a valid defense, what's not a valid defense. The Pennsylvania
24 judge will decide that. What's wrong with that?

25 MR. TAGGART: That part of it, I don't have a problem

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1 with, Your Honor. What they're attempt -- what GMAC is
2 attempting to do here is get an in rem judgment, I mean,
3 against the property. But obviously state claims aren't on a
4 personal level. I am the person who took out the loan on that
5 property. It's my property. It's my credit. It's my -- you
6 know, once the property's gone, my claims against GMAC are just
7 stayed for --

8 THE COURT: No, you'll file a proof of claim in this
9 court and -- actually, it's broader than that. Because the one
10 thing I must say, what they set forth in their supplement
11 was that --

12 MR. TAGGART: Your --

13 THE COURT: Let me finish.

14 MR. TAGGART: Okay.

15 THE COURT: That you could come back to this court --
16 after the Pennsylvania judge rules, you can come back to this
17 court and seek to get broader stay relief. So for example, if
18 the Pennsylvania judge decided that -- I'm picking a number out
19 of the air -- two, five, ten, of your counterclaims are -- may
20 be valid defenses to foreclosure, and he proceeds to decide the
21 issues on those; if those same counterclaims also give rise to
22 damage claims on your part, it's possible -- I'm not saying
23 I'll do this -- but it's possible that if you came back at some
24 point, I would say that judicial efficiency favors the
25 Pennsylvania judge fixing the amount of any liability, because

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1 he or she necessarily had to decide issues of fact and law
2 relating to your defenses. I'm not saying; I don't know. But
3 it leaves open the possibility of you coming back.

4 If the court in Pennsylvania strikes all thirty-two or
5 thirty-one of the defenses and says they're not defenses to
6 foreclosure, your avenue for relief is clear. You file a proof
7 of claim in this court and in due course you'll adjudicate --
8 the Court will, if there's objections to the claims, the Court
9 will adjudicate it. But -- anything else you want to add, Mr.
10 Taggart?

11 MR. TAGGART: Yeah. I have a question for the Court.
12 It's obviously -- I file a claim with the court, which they'll
13 pay at back pennies on the dollar. So if they get a judgment
14 for 800,000 dollars, even though, if I have claims --
15 counterclaims for 800,000 dollars in personam, they go ahead
16 proceed, I lose the property, and I have no recourse --

17 THE COURT: They've represented in the supplement and
18 in the memorandum of law that Reed Smith filed, that in a
19 Pennsylvania foreclosure action such as the one pending, that
20 there is no in personam judgment entered. It's purely a so-
21 called in rem proceeding. If they prevail, they succeed in
22 foreclosing on your property. But it doesn't result in an in
23 personam judgment. I'll ask the debtors' counsel about that,
24 but --

25 MR. TAGGART: I understand what you're saying.

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1 THE COURT: Do you agree with that?

2 MR. TAGGART: I'm agreeing with what you're saying.

3 I'm saying they're using the in rem foreclosure, not only in
4 Pennsylvania and in other states, to circumvent and stay
5 everybody's --

6 THE COURT: Well, you say that. But --

7 MR. TAGGART: -- you know, against -- that's what
8 they're doing. So they're holding off --

9 THE COURT: Well, they filed the foreclosure action
10 long before they filed for bankruptcy.

11 All right. Any other points you want to make?

12 MR. TAGGART: Yeah. I mean, currently, in any
13 defenses that have come up that have to be alleged in federal
14 court: racketeering, fraud, fraud on the court, it would have
15 to be alleged in federal court, because there are damages
16 regarding that claim, and can also be used as defenses, have to
17 be alleged in federal court.

18 And those claims can be used to offset a judgment.

19 This court in the one hearing, the National Association of
20 Bankruptcy Attorneys assert -- or is allowing this court,
21 people in bankruptcy to offset judgments that GMAC -- I believe
22 that's what's asserted by the Court, but not in foreclosure.

23 THE COURT: Anything else?

24 MR. TAGGART: That's it.

25 THE COURT: All right. Mr. Rosenbaum?

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1 Just have a seat up front, because I'll give you a
2 chance if there's anything you want to -- you can sit back
3 against the rail or up there. Either way. Because I'll give
4 you another chance after Mr. Rosenbaum has spoken.

5 MR. ROSENBAUM: Your Honor, just one thing. Diane
6 Bettino of Reed Smith is here. She's counsel in the
7 foreclosure actions --

8 THE COURT: I do have -- I do understand it correctly
9 that you're not seeking an in personam judgment against Mr.
10 Taggart in the Pennsylvania action. Is that correct?

11 MR. ROSENBAUM: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. ROSENBAUM: Your Honor accurately stated the
14 position of the debtors on Mr. Taggart's motion. We are
15 prepared to allow the stay to be lifted, to the extent it is
16 not subject to the supplemental servicing order, to allow the
17 state court to rule on dispositive motions, whatever Mr.
18 Taggart would like to bring, GMAC motions as well, and have the
19 state court determine the matters before it on the
20 counterclaims and any claims Mr. Taggart wishes to raise within
21 the confines of the procedures of that court.

22 And again, it's without prejudice. If and when -- if
23 the court rules that there are actually monetary claims that
24 remain as part of his defenses that are otherwise stayed, Mr.
25 Taggart will have the right to come back to this court, renew

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1 his motion for relief -- or to the court to --

2 THE COURT: So the one thing -- and I raised this with
3 Mr. Taggart. I mean, I'm not deciding any of it today of that
4 point. But if the state court in Pennsylvania were to decide
5 that some number of these counterclaims are properly asserted
6 as defenses to foreclosure and were to go on and get ready for
7 a trial in them, and Mr. Taggart came back and said look, the
8 state court's going to go ahead and decide the issues of fact
9 and law, I'm not deciding it now, but judicial efficiency might
10 favor allowing the fixing of the claim.

11 You've entered into some stipulations today, in fact,
12 that do just that, allow another court to fix the amount of the
13 claim. It's premature for me to even deal with it, other than
14 that I just want to make it clear to you that I'll look at the
15 situation as it exists at the time.

16 MR. ROSENBAUM: Understood, Your Honor.

17 THE COURT: Okay. What about this new federal court
18 action he filed and the effort to withdraw the motion to lift
19 the stay. I mean, the action was clearly filed in violation of
20 the stay.

21 MR. ROSENBAUM: Your Honor, we have no objection to
22 withdrawal of the motions, provided Mr. Taggart withdraws the
23 actions --

24 THE COURT: Well, he hasn't said he's going to
25 withdraw the action. Well, the pre-petition action doesn't get

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1 withdrawn.

2 MR. ROSENBAUM: That's correct, Your Honor.

3 THE COURT: It's just the question about that post-
4 petition action that he filed.

5 MR. ROSENBAUM: Your Honor, these are clearly both
6 claims for monetary damages. He does seek some injunctive
7 relief to stay the foreclosure proceeding. But we're here
8 allowing that foreclosure proceeding to go forward. These
9 cases were just filed. No discovery's been taken. We don't
10 see any basis for relief from the stay under the Sonnax
11 factors, and the motion should be denied. And Mr. Taggart
12 should be directed to withdraw the motion for --

13 THE COURT: Well, I don't have a motion in front of me
14 addressed to this issue of what should happen with the post-
15 petition action. The pre-petition action, he wants to withdraw
16 the motion to lift the stay. It's stayed. Okay. The post-
17 petition action is a different story. It was filed in
18 violation of the automatic stay. And if you're consenting to
19 his withdrawing of the motion to lift the stay, fine, then I'll
20 deem it withdrawn. And you'll figure out -- I don't have
21 anything in front of me from you -- no motion that seeks relief
22 with respect to Mr. Taggart's filing of that action in
23 violation of the stay.

24 MR. ROSENBAUM: That's correct, Your Honor. We were
25 hoping to resolve everything today. But I understand there's

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1 nothing before Your Honor, and we'll reserve all our rights
2 with respect to that action. I think Mr. Taggart should
3 understand that, if he doesn't already, it's in violation of
4 the automatic stay, and we have certain rights under the
5 Bankruptcy Code, and procedures of this court to move for
6 appropriate sanctions and equitable relief.

7 THE COURT: Well, I'm going to leave it to you to try
8 and work that out with Mr. Taggart. Okay?

9 MR. ROSENBAUM: Thank you, Your Honor.

10 THE COURT: All right. Mr. Taggart, is there anything
11 else you want to add?

12 MR. TAGGART: If I may?

13 THE COURT: Go ahead. Come up.

14 MR. TAGGART: Thank you, Your Honor, first, for your
15 time. I apologize if -- again, I'm pro se, I'm not trying to
16 make excuses though. And I didn't file that claim recently
17 with intentional malice or anything against the court or GMAC.
18 So --

19 THE COURT: I'll tell you what, Mr. Taggart. Talk to
20 Mr. Rosenbaum. And he's consented to your withdrawing the
21 motion to lift the stay as to both that pre-petition federal
22 action and the post-petition federal action. You ought to try
23 and resolve the issue about the post-petition action. Because,
24 I understand you're pro se, but the rules -- I may be -- I try
25 to bend over backwards for pro ses, okay? But there are some

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1 things you can't do. Okay? Talk to Mr. Rosenbaum, see if you
2 can work it out, as to that.

3 MR. TAGGART: Yeah, I will definitely do that.

4 THE COURT: Okay.

5 MR. TAGGART: The other question I had is, on the pre-
6 petition filing, which -- in federal court, which involved GMAC
7 actually as a third-party defendant. It's actually against
8 Montgomery County. Some state courts have recognized the
9 fraudulent, false robo-signed affidavits and assignments in
10 mortgage foreclosures, by GMAC, Jeffery Stephan affidavits. I
11 don't want to waste the Court's time. The State Attorney
12 General in Maine, Ohio -- they're basically considered fraud.

13 Some state court are still allowing those affidavits
14 to be used in foreclosure cases. In my case it is true, and in
15 several other cases, they're still foreclosing on fraudulent
16 robo-signed affidavits currently. I have evidence of that.
17 That is what, in a sense, that case is about. The federal
18 complaint was filed January 26th against Montgomery County and
19 GMAC as a third party defendant.

20 That was one of the motions that was withdrawn. They
21 just gave me a brief last week. Not to waste the Court's time,
22 but I think it's essential that the Court recognize any pre-
23 petition cases or at this time, before proceeding, people
24 losing their houses, even in rem judgment, with false
25 affidavits. There should be a remedy for homeowners like

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1 myself, and still thousands if not millions of people losing
2 their homes, because of in rem judgment, and they're holding
3 off litigation and using the bankruptcy court to evade
4 responsibility because of these false foreclosures.

5 And that's what that case is about. And that was
6 filed prior to them filing for bankruptcy. So I'm asking the
7 Court, at what point will these -- myself and other people get
8 relief from that, because after the house is gone, there's --

9 THE COURT: Mr. Taggart, if you believe that false
10 documents, robo-signed documents have been used in their effort
11 to foreclose on your home, the place to raise that issue is in
12 the foreclosure proceeding in state court in Pennsylvania.

13 MR. TAGGART: Yeah.

14 THE COURT: You had -- let me just finish.

15 MR. TAGGART: Okay, I'm sorry.

16 THE COURT: The supplemental servicing order
17 specifically authorizes you to lift the stay with respect to
18 any defense to foreclosure. If it's a -- I don't have your
19 case or any of the others in front of me, nor should they be in
20 front of me. The matter is pending in a state court in
21 Pennsylvania. You need to raise whatever defenses you believe
22 you can support that are proper defenses to foreclosure.

23 I have no tolerance for robo-signing or other efforts
24 by mortgagees or loan servicers, improperly to foreclose. I've
25 written a number of opinions myself on those issues. But the

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1 place to raise the issue is in the foreclosure action in
2 Pennsylvania. And there's nothing that prevents you from doing
3 that.

4 MR. TAGGART: Your --

5 THE COURT: Okay. I need to move on on the calendar
6 now.

7 MR. TAGGART: -- yeah. In the evidentiary hearing on
8 Wednesday, can those documents be produced as well?

9 THE COURT: What evidentiary hearing on Wednesday?

10 MR. TAGGART: Robo-signed documents as far as --

11 THE COURT: It has nothing to do with -- what does
12 that have to do with anything that's before me?

13 MR. TAGGART: Okay. I'm sorry. Then I'll withdraw
14 that. That's fine.

15 THE COURT: Okay. All right. All right, thank you,
16 Mr. Taggart.

17 MR. TAGGART: Okay. Thank you.

18 THE COURT: Mr. Rosenbaum -- and I'm taking the
19 Taggart matter under submission, and I'll issue an appropriate
20 opinion or order.

21 MR. ROSENBAUM: Thank you, Your Honor. The next
22 matter on the agenda is the amended motion for relief from the
23 stay filed by Corla Jackson. It's docket number 856. I'm
24 going to cede the podium to Aaron Klein. And I believe Ms.
25 Jackson is in the courtroom as well.

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1 THE COURT: Okay.

2 MR. KLEIN: Good morning, Your Honor. Aaron Klein,
3 Morrison & Foerster, for the debtors. I'll immediately cede
4 the podium to Ms. Jackson, since she's here.

5 THE COURT: Okay. Is someone here? Is Ms. Jackson or
6 someone here? Are you going to -- do you want to argue? Come
7 on up.

8 MS. JACKSON: Good morning, Your Honor.

9 THE COURT: Good morning. Just identify yourself
10 specifically for the record, okay?

11 MS. JACKSON: Corla Jackson.

12 THE COURT: Thank you, Ms. Jackson.

13 MS. JACKSON: Um-hum.

14 THE COURT: And just so it's clear what we have; on
15 June 8th, 2012, you filed a motion for relief from stay that's
16 at ECF docket number 264. And on July 19th, 2012, you filed an
17 amended motion to lift the stay. And that's at ECF docket
18 number 856. All right. Go ahead.

19 MS. JACKSON: Yes, sir.

20 THE COURT: Go ahead.

21 MS. JACKSON: I asked Mr. Aaron --

22 MR. KLEIN: Klein.

23 MS. JACKSON: -- Klein to produce the long form
24 original note and he refused. I also asked him to produce the
25 original allonge; he also refused. I also asked him --

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1 THE COURT: You need to speak into the microphone, Ms.
2 Jackson.

3 MS. JACKSON: I also asked him to produce the
4 original -- these are long-form documents, that is given to
5 every homeowner. I asked him to produce these, because --

6 THE COURT: You need to speak into the microphone,
7 okay? Talk to me, not to him.

8 MS. JACKSON: Okay. I asked him to produce everything
9 original, because I had a copy of all the originals that he
10 does not have. I also asked him to produce the original copy
11 of the allonge that they whited out the loan number on, and
12 they also whited out the assignment number. And, Your Honor, I
13 have a certified copy from the courts of Alabama with the loan
14 number that they had an assignment on that they somehow got a
15 hold to Wells Fargo's documents, Your Honor.

16 And I have it in their handwriting, right here, and I
17 have the loan number that they altered -- they handwritten it,
18 and put the loan number on here, and they filed it. And
19 there's a certified copy from the courts.

20 THE COURT: Let me ask you this, Ms. Jackson. I
21 understand your home was foreclosed, correct?

22 MS. JACKSON: Yes, my -- what happened was the United
23 States District Court of the Southern Division (sic) of Alabama
24 stayed the case. After all of these original documents showed
25 up, they filed bankruptcy real quick. And the judge stayed the

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1 case. And they're supposed to report back to the judge --

2 THE COURT: Could I -- look. Tell me this.

3 MS. JACKSON: They're supposed to report back to the
4 judge, the status of the case. They weren't supposed to
5 foreclose or anything. Oh, it gets juicy, Your Honor. I have
6 an affidavit here signed by GMAC Mortgage Corporation, that
7 they do not own my note. Would you like to see it, Mr. Klein?

8 THE COURT: Ms. Jackson, talk to me, not to Mr. Klein,
9 okay?

10 MS. JACKSON: Okay.

11 THE COURT: Ms. Jackson, as I understand it, you filed
12 a state court action in Alabama --

13 MS. JACKSON: And --

14 THE COURT: -- with claims for damages against GMAC
15 Mortgage, correct?

16 MS. JACKSON: I filed -- I filed damages because they
17 committed fraud, Your Honor.

18 THE COURT: Just let's take it one step at a time.
19 You filed a state court action seeking to recover damages,
20 filed it in Alabama State Court against GMAC Mortgage?

21 MS. JACKSON: Correct. And they ran and filed
22 bankruptcy.

23 THE COURT: Okay.

24 MS. JACKSON: Real quick. And so the judge stayed the
25 case so they couldn't do anything --

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1 THE COURT: And GMAC Mortgage --

2 MS. JACKSON: Filed bankruptcy with you --

3 THE COURT: Stop. They removed the case from state
4 court to the United States District Court for the Southern
5 District of Alabama, correct?

6 MS. JACKSON: Yes, sir.

7 THE COURT: Okay.

8 MS. JACKSON: And they didn't know I had all the
9 originals. And, Your Honor, you know what they did after they
10 filed bankruptcy? They were supposed to report to you. Your
11 Honor, they sold my house for 400 and some thousand dollars,
12 and went around you and the United States government. And I
13 have that as evidence too.

14 THE COURT: Let me ask Mr. Klein -- I'll give you a
15 chance. Why don't you just sit down in the front row up there
16 and I'll give you another chance.

17 Mr. Klein, what's the status of this matter?

18 MR. KLEIN: One second, Your Honor. Your Honor, Aaron
19 Klein, Morrison & Foerster, for the debtors. The status of the
20 matter is that Ms. Jackson's house was foreclosed on and sold
21 in a foreclosure sale on June 1st. That was finalized on June
22 1. Under Alabama state law, Mr. Jackson has a right --

23 THE COURT: Was that a judicial or nonjudicial
24 foreclosure --

25 MR. KLEIN: It's a nonjudicial state, Your Honor. One

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1 second, Your Honor.

2 Under Alabama law, Your Honor, Ms. Jackson has a year
3 to redeem or cure the foreclosure, if within ten days of a
4 written demand for possession she vacates the premises. If she
5 does not, then that redemption is waived. The debtors
6 delivered a demand for possession on June 29th, and Ms. Jackson
7 did not vacate. And under Alabama state law, she waived her
8 right for redemption, so the foreclosure action is --

9 THE COURT: When did Ms. Jackson -- when did Ms.
10 Jackson file the state court action?

11 MR. KLEIN: January of this year. So about four
12 months before the foreclosure action.

13 THE COURT: And when did you remove it to federal
14 court?

15 MR. KLEIN: February -- February 14th.

16 THE COURT: What was the basis for removal?

17 MR. KLEIN: Diversity of jurisdiction, Your Honor. I
18 think she met the requirements for amount of damages pled.

19 No eviction --

20 THE COURT: And what was sought in her complaint?
21 Only monetary damages?

22 MR. KLEIN: Your Honor, we've combed through the
23 complaint and GMAC's Alabama counsel has given us what they
24 think are the actions alleged. And it looks like these are all
25 actions for damages. In fact --

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1 THE COURT: The complaint was filed before --
2 MR. KLEIN: The complaint was filed before --
3 THE COURT: -- before you completed foreclosure. All
4 right.

5 MR. KLEIN: Yes. Yes. So the current status is that
6 she had the complaint filed prior to -- in which she alleged
7 various claims such as hate crimes, securities --

8 THE COURT: I know what --

9 MR. KLEIN: -- fraud --

10 THE COURT: -- is being alleged. I saw the complaint.

11 MR. KLEIN: Okay. And then the foreclosure happened
12 in June. And we were in a gap period, because no eviction
13 proceedings had been filed. So we think, respectfully, Your
14 Honor, that Ms. Jackson's remedies are to raise any valid state
15 law defenses to foreclosure that she has, when we file the
16 eviction proceeding. Because her cure period for the
17 foreclosure is not available to her anymore, because she did
18 not vacate the premises after the demand for possession on, I
19 think it was June 29th. She had ten days to vacate the
20 premises.

21 MS. JACKSON: Your Honor, there's an affidavit they
22 say they didn't own my house.

23 THE COURT: Just a second.

24 Who is the mortgagee? Were you the loan -- was the
25 debtors the loan servicer or the original mortgagee? What

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1 was --

2 MR. KLEIN: Both, Your Honor.

3 MS. JACKSON: No, you weren't.

4 THE COURT: Ms. Jackson --

5 MR. KLEIN: We were not the original --

6 THE COURT: -- Ms. Jackson, don't interrupt. I'm
7 going to give you another chance to speak, okay? But you have
8 to wait. Okay?

9 Go ahead, Mr. Klein.

10 MR. KLEIN: Ms. Jackson is correct. The original
11 mortgagee -- well, the original originator of the loan was
12 Option One. We were always the servicer under that loan. And
13 then in 2008, the loan was assigned to GMAC. So we became the
14 servicer and the mortgagee.

15 THE COURT: How was the note assigned?

16 MR. KLEIN: It was assigned through a transfer --

17 THE COURT: Written?

18 MR. KLEIN: A written transfer, yes. In fact, I think
19 Ms. Jackson cited that written transfer in her complaint,
20 attached it as a copy.

21 THE COURT: And was the written transfer signed
22 contemporaneously with the transfer of the note to GMAC?

23 MR. KLEIN: That I don't know, Your Honor.

24 If I may, Your Honor, I think that what we have here
25 is a situation where Ms. Jackson has asserted damages claims

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1 against the debtors that are not in connection with the
2 foreclosure. The foreclosure proceeding happened. She had an
3 opportunity to assert claims as valid state law defenses
4 against foreclosure. She will have that opportunity again when
5 we move to -- if and when we move to evict, in the eviction
6 proceedings, under the supplemental servicing order.

7 THE COURT: Okay, Mr. Klein.

8 Ms. Jackson, go ahead.

9 MS. JACKSON: Your Honor, I have an order here from
10 the judge that stayed this case, so that they couldn't do
11 anything to my house.

12 THE COURT: When was that entered?

13 MS. JACKSON: November 30th, 2012.

14 THE COURT: Can't be.

15 MS. JACKSON: No, wait -- let's see. Litigation on or
16 before -- let's see. May 31st.

17 THE COURT: Of what year?

18 MS. JACKSON: It says "done and ordered this 31st day
19 of May 2012". And we were supposed to report back to -- Mr.
20 Klein and I were supposed to report back to this judge and tell
21 them where we were by November 30th, 2012, right here.

22 And what they did was they filed bankruptcy. They
23 went around you, they went around me, they went around the
24 judge, they went around the government, and they sold my house
25 for 401,000 dollars, and they cashed in a policy --

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1 THE COURT: Mr. Klein, why don't you bring me that --
2 Ms. Jackson, you can stay there. Mr. Klein, bring me
3 that order, would you please? Bring it up to me.

4 MS. JACKSON: Oh, here's the affidavit too.

5 THE COURT: No, let me just look at that first, okay?

6 MS. JACKSON: Okay.

7 THE COURT: I appreciate it, Mr. Klein.

8 MR. KLEIN: May I approach, Your Honor?

9 THE COURT: Yes, please.

10 (Pause)

11 THE COURT: I'll give you this back at the end. Okay?
12 Go ahead. Anything else you want to add, Ms. Jackson?

13 MS. JACKSON: Oh, Your Honor, it gets worse. They
14 took the original loan documents and fabricated a page that did
15 not match and put my signature to it. And I have the original
16 documents on how they did it. And I asked Mr. Klein, I said,
17 Mr. Klein, would you please submit me your original allonge,
18 your original --

19 THE COURT: Talk to me, not Mr. Klein.

20 MS. JACKSON: -- original -- I'm sorry, Your Honor.
21 Your original allonge, your original assignment, your original
22 loan documents, the original appraisal on my property, because
23 two acres wasn't even attached to my loan. And Your Honor, the
24 credit bureau did an investigation, and my loan was paid off in
25 full. And, Your Honor, I think they was after that natural gas

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1 on my property.

2 THE COURT: Okay. Would you like this back, Ms. --

3 MS. JACKSON: You can have it. I can get another
4 copy, Your Honor --

5 THE COURT: Okay, thank you.

6 MS. JACKSON: -- from the judge.

7 THE COURT: Well, no, you can take it. I can get one.

8 MS. JACKSON: You can get one?

9 THE COURT: I can get one.

10 MS. JACKSON: Thank you.

11 THE COURT: Thank you very much. All right. Mr.

12 Klein --

13 MS. JACKSON: Your Honor, I'd like to add one thing.

14 THE COURT: Go ahead. Quickly.

15 MS. JACKSON: Your Honor, you see that where -- they
16 said that they got this from Option One. No, they did not.
17 They stole it from somebody named Jamie Company. They
18 handwritten in the loan number. They typed it up -- a fake
19 assignment. They whited out the assignment to defraud the
20 courts in Alabama. And I can prove it. And that's why I am
21 here to get a motion to proceed to trial to get this stuff in
22 order, because, Your Honor, they fabricated each document.
23 Each loan document, Your Honor, has a special form number.

24 All these victims that's fighting, their loan
25 documents -- if their loan number changed, nine times out of

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1 ten, they just might be a victim. But on their original loan
2 document, Your Honor, the forms that they made up does -- it
3 has special forms, these forms do not match. Example: page 3,
4 they whited out the form down there, and they stuck my
5 signature to a form that's totally different from the original
6 loan docs. And, Your Honor, when they did it, the page
7 numbers, like -- look, they handwritten it in, and then typed
8 it up and then filed it and thought I was crazy.

9 And they whited out the original loan number. Your
10 Honor, it's on my credit report, on each loan document, all of
11 these victims need to know, by Option One Mortgage, on your
12 original loan documents, it has the victim's original loan
13 number and the servicer. The servicer is at the top of each
14 original loan documents, with the date and the servicer, which
15 was not GMAC Mortgage Corporation at all.

16 THE COURT: Okay. I'm going to take this matter under
17 submission. Thank you very much, Ms. Jackson.

18 MS. JACKSON: Thank you, Your Honor. Any time you
19 need to know what's going on, you just call me, and I tell you.

20 THE COURT: Okay.

21 MR. KLEIN: Thank you, Your Honor. The next matter on
22 the agenda is the motion of Christina Ulbrich for relief from
23 the automatic stay.

24 THE COURT: Yes.

25 MR. KLEIN: I'd cede the podium to movant's counsel.

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1 MR. RICHTER: Thank you, Your Honor, and thank you,
2 counsel. Kai Richter from Nichols Kaster, PLLP, for Christina
3 Ulbrich and the putative classes. I have some familiarity with
4 the realm of force-placed insurance. Our firm is handling a
5 number of different matters involving force-placed insurance
6 involving a number of different mortgage lenders and servicers.

7 I think in this case, the facts of this case are among
8 the most egregious that I have seen. Very briefly, Your Honor,
9 Ms. Ulbrich took out a mortgage on August 4th, 2003 and as
10 alleged in the complaint, shortly before she took out the
11 mortgage, she was told that she would not be required to carry
12 wind insurance on the property. Over seven years later, on
13 December 19th, 2010, she received a letter from GMAC
14 indicating, lo and behold, that she did need to carry,
15 according to GMAC, wind insurance on the property. And then a
16 few months later, on March 23rd, 2011, GMAC force-placed,
17 purchased out of Ms. Ulbrich's escrow account, or using funds
18 from an escrow account that was set up for her, a windstorm
19 policy that was backdated over seventeen months to October 1st,
20 2009. And the policy period expiring October 1st, 2010.

21 So at the time it was purchased, the policy was fully
22 expired. And Ms. Ulbrich was charged almost 10,000 dollars for
23 that windstorm policy. On the very same day, March 23rd, 2011,
24 Ms. Ulbrich was sent a --

25 THE COURT: What you really need to tell me, Mr.

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1 Richter, is why the stay should be lifted.

2 MR. RICHTER: The stay should be lifted, Your Honor,
3 for several reasons. First of all, we really feel like the
4 balance of harms weighs in favor of moving forward. Now, as we
5 did note in our motion papers, there is a standstill agreement
6 in place with respect to Ms. Ulbrich. And really, one of my
7 first duties as Ms. Ulbrich's counsel, was to try to put a
8 standstill agreement in place to avoid the risk of foreclosure
9 to her. Because it was a very real possibility, when she
10 brought her suit.

11 The case, however, is styled as a putative class
12 action. And unless her case is allowed to proceed, there is a
13 risk, and I would say a significant risk, that other borrowers
14 who have been backdated with policies --

15 THE COURT: You refer to it as a putative class
16 action. Has the court certified the class?

17 MR. RICHTER: No.

18 THE COURT: Has the class certification motion been
19 made?

20 MR. RICHTER: No, because we haven't had the
21 opportunity to do it yet, because we haven't been able to take
22 any discovery from GMAC.

23 THE COURT: There's another defendant as well. Is
24 that correct?

25 MR. RICHTER: That is correct. And the fact -- the

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1 stay is in place as to GMAC. It is not in place, obviously, as
2 to Balboa Insurance Services, which is another complicating
3 factor for the action and is really hindering our ability to
4 pursue --

5 THE COURT: What was the role of Balboa?

6 MR. RICHTER: Balboa Insurance Services was a vendor
7 that worked with -- and let me just preface this. We're
8 handicapped, to a certain extent, because we're still trying to
9 get to the bottom of it and take the discovery.

10 But based on what we've seen, it appears that Balboa
11 Insurance Services, Inc., was a vendor that GMAC used for the
12 force-placed policy, and helped GMAC procure the lender placed
13 policy. And we allege Balboa Insurance Services, Inc. paid a
14 kickback or a commission to GMAC on the policy.

15 THE COURT: That's alleged in the complaint?

16 MR. RICHTER: Yes.

17 THE COURT: Go ahead.

18 MR. RICHTER: So with respect to the Sonnax factors,
19 Your Honor, we believe, first of all --

20 THE COURT: Let me ask you this, before you go to the
21 Sonnax factors. Because I understand that there's a fully
22 briefed motion to compel arbitration that's under submission
23 with the Court.

24 MR. RICHTER: That's correct.

25 THE COURT: When was it placed under submission? Was

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1 there argument, or just on the briefs?

2 MR. RICHTER: There has not been oral argument. And
3 the briefing was closed -- they filed their motion on January
4 13th, 2012. I don't have the date that the briefing was
5 closed, but within, I would say, a month to two months after
6 that. So it's fully teed up and ready to go before the Court.
7 Judge Scola down in the Southern District of Florida, who, as
8 we noted in our papers, has some experience dealing with force-
9 placed insurance issues down there. He has another case
10 involving another defendant, Williams v. Wells Fargo, that also
11 deals with force-placed insurance matters.

12 THE COURT: Has there been any discovery in the
13 action?

14 MR. RICHTER: We've had the opportunity to take
15 discovery from Balboa Insurance Services, but have not had the
16 opportunity to take discovery from GMAC. And the complication
17 of the bankruptcy is very real. I can tell you we --

18 THE COURT: What discovery did you take from Balboa?

19 MR. RICHTER: We've taken -- we served a first set of
20 written discovery requests, both interrogatories and document
21 requests. And one of the difficulties that we're facing, and
22 we actually have a pending motion to compel in the Southern
23 District of Florida against Balboa, is Balboa says, well, we
24 don't have all the documents. You've got to go get them from
25 some -- you have to go get them from somebody else.

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1 THE COURT: And has Balboa produced documents?

2 MR. RICHTER: Balboa has produced documents. Not as
3 much as we would like.

4 THE COURT: When did it produce documents?

5 MR. RICHTER: Within the last -- on the day -- they
6 had an initial production, which consisted of only twelve
7 documents, and then there was a supplemental production which
8 consisted roughly, I'll say of 1,000 pages of documents. I
9 think we received the supplemental production within the last
10 month. And the motion to compel was brought within the last
11 couple of weeks and is pending.

12 THE COURT: Anything else?

13 MR. RICHTER: Yes. So with respect to the Sonnax
14 factors, we believe that a number of them favor relief from the
15 stay. First of all, we believe that allowing the matter to go
16 forward will help resolve the issues, and if we get to the
17 point where we need to file a claim, will allow us to file a
18 meaningful claim.

19 THE COURT: It's a putative class action to recover
20 monetary damages, correct?

21 MR. RICHTER: Monetary damages, and very importantly,
22 injunctive relief.

23 THE COURT: What injunctive relief are you seeking?

24 MR. RICHTER: So with respect to injunctive relief,
25 the relevant paragraph of our complaint -- I'll just pull it up

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1 here -- is paragraph K. This is Exhibit A to my declaration in
2 support of our motion: "K) awarding appropriate equitable
3 relief, including but not limited to an injunction requiring
4 GMAC to reverse all unlawful, unfair or, otherwise improper
5 charges for force-placed insurance and related charges;
6 allowing customers to close loans or credit lines without first
7 paying unlawful, unfair, or otherwise improper charges for
8 force-placed insurance; prohibiting GMAC and its affiliates
9 from accepting commissions and prohibiting Balboa from paying
10 commissions to GMAC in connection with force-placed insurance;
11 prohibiting GMAC from purchasing backdated force-placed
12 insurance policies; and prohibiting Balboa from issuing
13 backdated policies to GMAC; requiring defendants to cease and
14 desist from engaging in further unlawful conduct in the future;
15 requiring GMAC to immediately cancel any efforts to foreclose
16 on property owned by plaintiff or other putative class
17 members."

18 THE COURT: Tell me about the standstill. I'm sorry
19 to interrupt you. But you said that you had -- with Ms.
20 Ulbrich, there was a standstill. Tell me what that is.

21 MR. RICHTER: There is a standstill in place. And
22 what the standstill does is essentially fixes Ms. Ulbrich's
23 mortgage payments at an amount that takes out the backdated
24 charges. Basically the backdated force-placed charges, it took
25 her from -- her monthly mortgage payment from roughly 1,200 a

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1 month to like 2,800 dollars a month. It is an absolutely
2 crushing blow.

3 THE COURT: Just tell me the facts, okay?

4 MR. RICHTER: Sure. So in the interim, the standstill
5 agreement provides some interim relief from her. It's interim.
6 But it doesn't provide any relief to other borrowers in a
7 putative class. And we feel like having Judge Scola rule on
8 these issues, would provide some needed clarification in this
9 area, particularly as to the backdating issue. I mean, their
10 position is it's just fine. Obviously we have a different
11 position.

12 THE COURT: Just tell me -- just clarify for me, the
13 standstill reduced her current mortgage payments to reduce it
14 by the amount that was being charged for insurance? Is that --
15 do I have that correct?

16 MR. RICHTER: That's correct. The standstill
17 agreement is at Exhibit B to my declaration. The first term
18 was that she would pay the arrearages on her mortgage. And
19 then in return for that, GMAC agreed that it would reduce her
20 monthly mortgage obligation to 1,141 dollars, that she could
21 make those payments. Which obviously did not include the
22 amount that was built in for the backdated policies.

23 THE COURT: Were there mortgage arrears at the time
24 you filed the case?

25 MR. RICHTER: There were mortgage arrears, and she

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1 made them up. Which was that first provision. Because she
2 basically became so frustrated and overwhelmed that she just
3 figured she was going to lose her house anyway.

4 So coming back to the Sonnax factors. I think
5 clarification from the court in the Southern District of
6 Florida, I think weighs in favor of relief from the stay. I
7 think another important point here is we're dealing with an
8 escrow account. And I know one of the Sonnax factors is
9 whether the debtor is involved as a fiduciary. One of our
10 claims is a breach of fiduciary duty claim against GMAC for
11 basically imposing improper charges to the mortgage escrow
12 account. So we believe that's another factor that weighs in
13 favor of relief from the stay.

14 Third, as I mentioned, the court in the Southern
15 District of Florida, Judge Scola, does have expertise in the
16 area of force-placed insurance. This is not his first case
17 involving force-placed insurance issues. Fourth, this action
18 does involve third parties, specifically Balboa. And obviously
19 from our --

20 THE COURT: The principal defendant was the debtor.

21 Am I correct?

22 MR. RICHTER: I don't want to get into principal or
23 not principal. I think it's fair to say --

24 THE COURT: Well, you say they used Balboa to place
25 the insurance.

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1 MR. RICHTER: Four of the claims are against GMAC, and
2 one of the claims is against Balboa.

3 THE COURT: There's no other mortgagees or loan
4 servicers that are defendants in the action?

5 MR. RICHTER: That is correct.

6 Fifth, given the stage of the proceedings, there's
7 been fully brief motions --

8 THE COURT: It was a fully briefed motion to compel
9 arbitration. What other motions are fully briefed?

10 MR. RICHTER: A motion to dismiss by Balboa. GMAC's
11 motion was --

12 THE COURT: But that's not stayed. I mean, Balboa's
13 motion to dismiss can go forward.

14 MR. RICHTER: However, GMAC's motion to compel
15 arbitration was a motion to compel arbitration or a motion to
16 dismiss the case. It was styled in the alternative.

17 And then finally, Your Honor, the sixth Sonnax factor,
18 the balance of harms, we believe that two aspects of this weigh
19 in favor of relief from the stay. First of all, proceeding
20 against just one of the defendants instead of the other is --
21 raises some real problems from a litigation standpoint. And
22 then second, as I've noted, the fact that there is not a
23 standstill agreement in place for the members of the putative
24 class, they don't have the relief.

25 THE COURT: It's not certified as a class action.

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1 MR. RICHTER: Correct. But the potential harm to them
2 is real. And unless our hands are untied and we can move
3 forward, we can't get the case certified as a class action.
4 And that's really the crux of the matter.

5 THE COURT: It's an additional reason why I wouldn't
6 lift the stay to allow a class action -- not certified class
7 action to proceed against the debtors. If people have claims,
8 there's a claims allowance process in the bankruptcy court.

9 All right. Let me hear from Mr. Klein.

10 Why don't you have a seat up front, and I'll give you
11 a chance to reply.

12 MR. KLEIN: Thank you, Your Honor. Aaron Klein,
13 Morrison & Foerster for the debtors. Your Honor, we echo your
14 thoughts about the claims resolution process. Our position is
15 that the movant has not met her burden to lift the automatic
16 stay. The Sonnax factors weigh heavily against lifting the
17 automatic stay.

18 If the relief requested were granted, which is to
19 potentially form a huge class action, and counsel's papers --
20 movant's papers say it could number into the thousands -- and
21 move forward with a complex class action like that, it would
22 have a huge burden on the debtors. That burden would distract
23 them from administration of the Chapter 11 cases, deplete the
24 resources of the debtors. There's no insurance here, so it's
25 not going to cover the claims of the litigants, and it's not

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1 going to pay for the defense costs, which would be most likely
2 dramatic. We think that --

3 THE COURT: What's the basis for the arbitration
4 motion?

5 MR. KLEIN: I'm sorry?

6 THE COURT: What is the basis for the arbitration
7 motion that the debtor made?

8 MR. KLEIN: Your Honor, at the beginning, at the
9 outset of the case, we wanted to proceed to arbitration to see
10 if there was a potential resolution.

11 THE COURT: Is there an arbitration clause in
12 governing documents?

13 MR. KLEIN: That's right, Your Honor.

14 THE COURT: In what?

15 MR. KLEIN: Ms. Ulbrich's, the movant's -- not only --
16 she took out a home loan, but she also took out a HELOC. And
17 in a home equity line of credit, there's an arbitration -- a
18 mandatory arbitration clause. That was the basis for the
19 motion to compel arbitration --

20 THE COURT: What was the --

21 MR. KLEIN: -- or in the alternative to dismiss.

22 THE COURT: -- basis for the motion to dismiss?

23 MR. KLEIN: I'm sorry?

24 THE COURT: What was the basis of the motion to
25 dismiss?

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1 MR. KLEIN: The basis for the motion to dismiss, I
2 believe -- let me actually -- give me on second, if you would.
3 I have this in my notes.

4 Your Honor, if you'd just give me one second --

5 THE COURT: Yes, go ahead.

6 MR. KLEIN: -- while I can confirm with my client.

7 Apologies, Your Honor, for the delay. Aaron Klein,
8 again, Morrison & Foerster, for the debtors.

9 The basis for the motion to dismiss, it was a 12(b)(6)
10 motion for failure to state a claim. The position that the
11 debtors took in that was that in the mortgage documents, lender
12 placed insurance is spelled out as a potential occurrence or as
13 a right of the lender to make sure that there's continuous
14 insurance coverage. So that was the basis for the motion to
15 dismiss.

16 THE COURT: Am I correct that the Court in Florida set
17 a November 14th, 2012 discovery -- fact discovery cutoff?

18 MR. KLEIN: That's right, Your Honor. That scheduling
19 order was agreed to, I think, prior to filing for Chapter 11.

20 THE COURT: And a deadline for dispositive motions of
21 November 29th?

22 MR. KLEIN: That's right.

23 THE COURT: And a two-week trial beginning March 25th?

24 MR. KLEIN: That's correct, Your Honor.

25 Your Honor, if I may respond to some of Mr. Richter's

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1 arguments.

2 THE COURT: Before you do that -- and I'll give you a
3 chance. But I'm concerned about the standstill that was
4 reached with Ms. Ulbrich. What's the status of that now that
5 the debtors have filed for bankruptcy?

6 MR. KLEIN: I believe the standstill is in place, Your
7 Honor.

8 THE COURT: And what is it that the debtor is
9 committing to do with respect to the standstill with Ms.
10 Ulbrich. If I deny the motion to lift the stay, is Ms. Ulbrich
11 suddenly going to face foreclosure because she's not paying the
12 insurance premium as part of her monthly mortgage payment?

13 MR. KLEIN: No, Your Honor. I --

14 THE COURT: Where do I derive that from?

15 MR. KLEIN: I believe that the status is that we
16 entered into the standstill agreement during the pendency of
17 her case. So as long as her action is pending, stayed or
18 otherwise, the standstill agreement is in place. So the
19 debtors will not move to foreclose on her property.

20 THE COURT: Go ahead, if you want to address the
21 arguments Mr. Richter made.

22 MR. KLEIN: Yes, Your Honor. Thank you. We believe
23 that the balance of the harms -- any harms that may come to the
24 movant by virtue of the fact that her litigation is stayed as
25 to GMAC Mortgage, is vastly outweighed by the harms that would

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1 come to the debtors of having to spend the time, energy, and
2 resources litigating this matter.

3 I would start out by saying that there really is no
4 immediate urgency by virtue of the standstill agreement and by
5 virtue of the fact that we intend to stand by the standstill
6 agreement to Ms. Ulbrich. I would also be cautious in talking
7 about the harm that befalls movant by only going against --
8 being able to go against Balboa and also by virtue of the fact
9 that other claimants may be suffering harm.

10 Let me take the second one first in terms of other
11 claimants. As you had said, there's no class certified here.
12 To the extent that any other -- we acknowledge these are very
13 serious allegations. And other people may have these claims as
14 well, potentially a lot of other people. Their remedy is,
15 under the supplemental servicing order, to assert a defense to
16 any foreclosure actions or any eviction proceedings -- we've
17 carved that out from the automatic stay -- or come to this
18 court and file a proof of claim.

19 Secondly, proceeding against just Balboa, we
20 understand that that presents a little bit of an inconvenience,
21 not just a little bit, but it does present an inconvenience.
22 We believe that they could move against Balboa as to the claims
23 against Balboa. And they're certainly doing that with the
24 discovery that they've served on Balboa.

25 And to the extent that they -- they have a remedy here

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1 to, which is to sever GMAC from the action and come to court
2 here, file a proof of claim. And in fact, that's the remedy
3 for all of the other claimants in the putative class. I would
4 say that that goes, itself, to the Sonnax factor of judicial
5 economy, which is to say that this forum provides benefits and
6 advantages over a class action in the fact that you don't have
7 to certify a class action. This Court deals every day with
8 resolving the claims of thousands of claimants through the
9 centralized claims resolution process. So --

10 THE COURT: Did the court in Florida set a deadline
11 for filing of a class certification motion?

12 MR. KLEIN: No, not to my knowledge. In the
13 scheduling order, they asked for parties to advise them. They
14 asked for Balboa and movant to advise them as to the status of
15 any class certification motions.

16 THE COURT: Why --

17 MR. KLEIN: I would also --

18 THE COURT: -- why shouldn't the stay be lifted for
19 the purpose of permitting the court to decide the fully briefed
20 motion to dismiss or to compel arbitration?

21 MR. KLEIN: Your Honor, I don't think that we would
22 have an issue with lifting the stay for the purpose of
23 determining whether or not the case should be dismissed. My
24 concern -- and I could confer with my client on this -- but my
25 concern about arbitration at this point is that --

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1 THE COURT: Well, you made the motion.

2 MR. KLEIN: Yes, understood. My concern is that it's
3 still going to require a lot of discovery. When Mr. Richter
4 talks about the motions are fully briefed and just they still
5 have to be argued; there's no writing or discovery that needs
6 to take place with those.

7 But my concern is that we would continue to expend
8 resources here on the arbitration when they could come into
9 this court --

10 THE COURT: No, you have -- I didn't say the
11 arbitration would go forward.

12 MR. KLEIN: Right.

13 THE COURT: There's a fully briefed motion, as I
14 understand it, in the alternative, to dismiss the case or
15 compel arbitration. Why shouldn't the trial judge be permitted
16 to decide that motion?

17 MR. KLEIN: Your Honor, I --

18 THE COURT: Because the law on arbitration here is --
19 I mean, it's not -- it's sort of an evolving area as to whether
20 a court should permit an arbitration to go forward to fix the
21 amount of a claim, for example.

22 MR. KLEIN: Right. Your Honor, after having you
23 clarify that you wouldn't say you would necessarily let the
24 arbitration proceed, I don't think we would have any issue with
25 lifting the stay solely for the purpose of permitting Judge

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1 Scola in the Florida court to rule on the motions already posed
2 and presented in front of him.

3 THE COURT: Anything else, Mr. Klein?

4 MR. KLEIN: I just want to address briefly some of the
5 arguments made in terms of the balance of the harms. That if
6 this were allowed to go forward beyond the dispositive motions
7 that are already pending stage, we're very concerned,
8 especially based upon the breadth and scope of discovery that
9 was served on Balboa, how quickly this could escalate into a
10 multi-hundreds of thousands of dollars litigation, and not
11 even -- that's discovery and class certification, expert
12 witness preparation, a trial on the merits. It would be
13 heavily burdensome on the debtors.

14 And I think by virtue of the fact that Balboa and
15 movants told Judge Scola that they could move forward,
16 notwithstanding the fact that GMAC -- the case was stayed as to
17 GMAC -- undercuts any arguments to say that they're suffering
18 harm by doing so. They both agreed to forward. They didn't
19 have to. Judge Scola asked them, please advise me as to how
20 you want to proceed. And they --

21 THE COURT: Let me ask you this; and I'll ask Mr.
22 Richter --

23 MR. KLEIN: Sure.

24 THE COURT: -- the same question. Do you have any
25 objection to my talking to Judge Scola to ask him whether he

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1 wishes to proceed to decide the pending motion?

2 MR. KLEIN: I don't think I have any objection, Your
3 Honor, to that.

4 THE COURT: Thank you, Mr. Klein.

5 MR. KLEIN: Thank you.

6 THE COURT: Mr. Richter, do you have any objection to
7 my speaking to Judge Scola about whether he wishes to go
8 forward to decide the pending motion?

9 MR. RICHTER: Not at all, Your Honor.

10 Just two points. First of all, with respect to the
11 claims process. I understand that individual borrowers may
12 have the opportunity to submit a claim. I just think
13 fundamentally, the class action process is going to provide
14 more comprehensive relief to those borrowers.

15 THE COURT: Well, you filed a case in November 2011,
16 and you never moved for class certification. Here we are in
17 August 2012. If you thought it was so important that this case
18 proceed as a class action, what were you waiting for?

19 MR. RICHTER: Discovery.

20 THE COURT: You know, ordina -- well, I'm not going to
21 get into the procedures of the district court in Florida.
22 Ordinarily class certification should proceed expeditiously.

23 MR. RICHTER: I understand that, Your Honor. And not
24 to go into like a long treatise on class action law, but the
25 United States Supreme Court has instructed litigants that you

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1 can't just rely on the pleadings anymore, and you need to come
2 forward with evidence to support your class certification
3 motion.

4 THE COURT: That's why frequently there's discovery
5 related to class certification right at the outset of the case
6 before merits discovery goes forward. But I'm not going to get
7 into a debate about that. The fact is, your case was filed in
8 November 2011. There's never been a motion for class
9 certification.

10 Anything else in response?

11 MR. RICHTER: That's it, Your Honor.

12 THE COURT: All right. I'm going to take the matter
13 under submission. I'm not certain whether I'm going to try to
14 speak to Judge Scola. I may. If I do, it will just be limited
15 to the issue of the pending motions.

16 MR. RICHTER: If I may, one --

17 THE COURT: Sure, go ahead, Mr. Richter.

18 MR. RICHTER: If the concern is overburdensome class
19 certification discovery, I think Judge Scola if he were to rule
20 on the motion to dismiss, would decide some threshold issues
21 that would allow the case to move very expeditiously to move
22 toward class certification. I think we could do it very
23 quickly and with limited discovery.

24 THE COURT: Thank you.

25 MS. FREJKA: Your Honor, may the committee be heard?

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1 THE COURT: Sure, go ahead.

2 MS. FREJKA: Elise Frejka, Kramer Levin, appearing on
3 behalf of the committee.

4 THE COURT: I'm sorry for not asking whether you
5 wished to be heard.

6 MS. FREJKA: It's okay. I moved out of your eyesight
7 to allow me to sit.

8 THE COURT: That's okay.

9 MS. FREJKA: The committee has reviewed the motion.
10 We've spoken with the debtors' counsel, and the committee
11 supports imposing the stay -- maintaining the stay with respect
12 to this. We view this from -- this as a claims mitigation
13 process and appropriate for relief at the stage of claims
14 litigation. We also view this as not affecting an individual
15 borrower's right in an individual foreclosure proceeding to
16 assert these issues to protect their homes.

17 And it doesn't need to have a class action to protect
18 those rights. We believe that this will be very burdensome and
19 expensive if it proceeds, and it will invite further
20 litigation. And we would ask that that motion be denied.

21 THE COURT: Thank you very much.

22 MR. KLEIN: Again, Aaron Klein, Morrison &
23 Foerster, for the debtors. The next item on the agenda is the
24 motion to lift the automatic stay by Mary Gardner. I'm pleased
25 to report that we have reached a consensual resolution that we

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1 are trying to paper at this point, and we will submit a
2 stipulation and consent order to Your Honor as soon as
3 possible.

4 THE COURT: All right. I'll adjourn the Gardner
5 matter, hopefully with a stipulation resolving it being
6 submitted. Thank you, Mr. Klein.

7 MR. KLEIN: Expeditiously, Your Honor. I'm now going
8 to turn the podium over. I think the next matter on the agenda
9 is the motion of the Federal Housing Finance Agency. I'll turn
10 the podium over to Mr. Joel Haims, my colleague.

11 THE COURT: Okay.

12 MR. HAIMS: Good morning, Your Honor. My name is Joel
13 Haims of Morrison & Foerster. We're counsel to the debtors.
14 This is a preliminary hearing on the FHFA's motion to lift the
15 automatic stay to pursue discovery of the debtors. Before I
16 turn the podium over to Mr. Glenn, I just want to update the
17 Court on resolution -- partial resolution.

18 We were able to reach agreement yesterday with respect
19 to two of the three parts of the motion. The initial motion
20 sought loan tapes and originator information. And yesterday we
21 were able to reach agreement on that portion of the motion.

22 We've also had discussions about the third portion,
23 which is the loan file production.

24 THE COURT: That's in the supplement that --

25 MR. HAIMS: It's in the supplement.

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1 THE COURT: -- FHFA filed?

2 MR. HAIMS: Correct. We've had some discussions about
3 that, but we haven't been able to reach resolution. We've
4 talked about various ranges of production, but we haven't
5 gotten an actual specific number or list. The two impediments
6 that we see to resolution on that front are: one, is the FHFA
7 hasn't agreed to pay for the production, as others who sought
8 loan production from the debtors have agreed to; and secondly,
9 in our view, this opens up floodgates to others, particularly
10 in the FHFA case itself, because the debtors have an interest
11 in the defense of that case, because of indemnification
12 obligations to shared insurance coverage, and because of the
13 FHFA's stated position in the reply brief that they intend to
14 assert a claim against the debtors, so that if the debtors get
15 loan file production -- and if the FHFA gets loan file
16 production from the debtors, then the debtors are going to be
17 in a position in which we're going to have to give loan file
18 production to the defendants. So it's going to have to be a
19 straight method. And that's just the position we're in.

20 I will now turn it over to --

21 THE COURT: All right, Mr. Glenn?

22 MR. GLENN: Good morning, Your Honor. Andrew Glenn,
23 Kasowitz Benson Torres & Friedman, on behalf of FHFA. I'm
24 joined here today by my partner Kanchana Leung, who is the
25 litigation counsel in the FHFA litigation, along with Daniel

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1 Fliman.

2 As our papers made clear, this is a motion to obtain
3 documents filed at the direction of Judge Cote, who is
4 presiding over that litigation. The litigation is against a
5 multitude of parties, including nondebtor affiliates, other
6 unrelated underwriters and issuers.

7 THE COURT: I've read the complaint.

8 MR. GLENN: Thank you. We've put forward two
9 alternative theories --

10 THE COURT: Let me ask you this.

11 MR. GLENN: Yes, Your Honor.

12 THE COURT: Have you resolved the issues with respect
13 to the loan tapes and the origination information?

14 MR. GLENN: Yes, Your Honor, yes. So just to put a
15 fine point on that, the first motion was filed at the direction
16 of Judge Cote to seek the loan tapes. At a subsequent status
17 conference, she again directed us to file a motion before Your
18 Honor to pursue the loan files. While it is true --

19 THE COURT: Whoa. Time out. I didn't see where she
20 told you to pursue the loan files. I definitely read the
21 transcript where she said to make the motion with respect to
22 loan tapes and origination information.

23 MR. GLENN: I believe, Your Honor, that's the July
24 14th status conference transcript -- July 17th. We cannot pull
25 the excerpt; that was in Ms. Leung's affidavit. That was

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1 during the argument, I believe, where she announced the
2 decision on the Section 105 injunction.

3 THE COURT: July 17th?

4 MR. GLENN: I believe. Mr. Fliman will provide the
5 Court with the cite to the record on that.

6 So it's true, as the debtors set forth in their
7 papers, that there are notionally 105,000 dollar -- 105,000
8 loan files at issue in the securitizations covered by that
9 litigation, but the real starting point is about 63,000, which
10 is what we call the supporting loan groups, which support the
11 loans that are actually at issue in those securitizations with
12 respect to Ally.

13 The litigation is a very complex one and the parties
14 have devoted a substantial amount of time, because if you look
15 at those 63,000 loan files, multiply that across all the
16 securitizations at issue in the litigation, it makes sense for
17 no one to get every single loan file at issue.

18 THE COURT: That's a very persuasive argument you've
19 just made.

20 MR. GLENN: Yes. So what we're working on in the case
21 is narrowing it down to a statistically relevant sample that
22 experts can use to extrapolate across the securitizations.

23 So what we've done in this case, Your Honor, to
24 alleviate the burden that the debtors have identified is to
25 narrow that number down, for purposes today, to 5,000 loan

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1 files that we will select in conjunction with our experts. And
2 we would hope that that would be the absolute outer limit --

3 THE COURT: I'll tell you what. Let me ask, are you
4 still in discussions with the debtors in trying to resolve the
5 issue as to production of loan files?

6 MR. GLENN: I don't believe so, Your Honor. I think
7 we've reached an impasse.

8 THE COURT: Okay, go ahead.

9 MR. GLENN: I do think that the impasse is who's going
10 to pay for it. To put a very fine point on the argument -- I'm
11 sure Your Honor's read the papers -- there are two issues here:
12 one, does the automatic stay apply; and two, if it does apply,
13 should it be lifted in this case?

14 The company has argued that this application is going
15 to open the floodgates, and I think that's actually not true.
16 We are in a very unique position. We are acting as conservator
17 for Freddie Mac, which has hundreds of billions of loans, and
18 our job is to resuscitate Freddie Mac, along with other
19 government-sponsored enterprises.

20 THE COURT: Is there something that says that you have
21 a greater right than any of the other plaintiffs in any of the
22 other cases pending in federal and state courts around the
23 country?

24 MR. GLENN: Yes, Your Honor. There are two points on
25 that. Number one, we, unlike every other entity, other than

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1 other government-sponsored entities and conservators of those
2 entities, are subject to a 105 injunction. So the major
3 argument the companies made in this case is that discovery will
4 interfere with the reorganization efforts, will distract all
5 those arguments that are relevant for Section 105. Judge Cote
6 has held, consistent with the Colonial Realty case enunciated
7 by the Second Circuit, that HERA, much like FIRREA, does not
8 allow a court to issue an injunction against FHFA.

9 THE COURT: But she has not ruled that discovery from
10 the debtors is not subject to the automatic stay. She sent you
11 here.

12 MR. GLENN: That's correct. I believe she indicated
13 that she did not believe that that was the case.

14 THE COURT: Well, she didn't rule.

15 MR. GLENN: That's the case.

16 THE COURT: And so the matter's before me.

17 MR. GLENN: That's correct.

18 So if Your Honor looks at the authorities they've
19 cited --

20 THE COURT: Let me ask you this: what about the Johns
21 Manville case, Judge Bryant's (ph.) decision?

22 MR. GLENN: That case, Your Honor, includes a very,
23 very fulsome explanation of the interference with the
24 reorganization process. The --

25 THE COURT: Do you have any -- you haven't provided

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1 the Court with any evidence rebutting the evidentiary showing
2 made by the debtors about the financial impact as well as
3 impact on the reorganization if the Court permitted your
4 discovery to go forward. Now, I would acknowledge that, as
5 briefed at least as to the loan files, it was substantially
6 more than the 5,000 loan files that you've apparently narrowed
7 to. But nevertheless, the debtors put in several declarations
8 that lay out in considerable detail the burden that would be
9 imposed on them to produce -- deal with loan files in
10 particular, and the cost of doing so wasn't refined down to
11 5,000 loan files. So I don't know what they estimate the cost
12 to be; that wasn't set forth. But do you agree that you have
13 not rebutted the debtors' evidentiary showing about the impact
14 on the reorganization proceeding and the expense to the debtor
15 if your discovery were to go forward?

16 MR. GLENN: Your Honor, we have narrowed, as Your
17 Honor has indicated, to 5,000 loan files. Our understanding --

18 THE COURT: Let me --

19 MR. GLENN: -- is the cost of that will be 25 dollars
20 each, for a total of 125,000 dollars.

21 THE COURT: Just take it one step at a time. You
22 agree that you have not offered any evidence at this stage of
23 what the cost -- and beside the cost, the impact on the debtor.
24 They set out in some detail the amount of time that would be
25 required to identify and retrieve loan files, arrange for

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1 copying, other -- admittedly their showing was based on
2 somewhere between 46,000 and 100-and-some-odd thousand loan
3 files, not 5,000 loan files, so I don't have evidence
4 specifically address that. But you didn't put in any evidence
5 at all to rebut the evidentiary showing, which I consider
6 uncontroverted at this point. You agree with that?

7 MR. GLENN: That's correct, Your Honor.

8 THE COURT: Okay, go ahead.

9 MR. GLENN: But, again, that presumes that the
10 automatic stay applies --

11 THE COURT: Yes --

12 MR. GLENN: -- which we don't --

13 THE COURT: -- which Judge Bryant in Manville did
14 find, correct? You didn't seem to discuss that. You discussed
15 the Ninth Circuit BAP decision in Miller, but you didn't really
16 delve into what Judge Bryant in the Southern District of New
17 York held in Manville on quite analogous facts and arguments.

18 MR. GLENN: We did, Your Honor. We indicated a
19 footnote that that case relates to an extension of the
20 automatic stay, not a proper and strict construction of Section
21 362 itself. And if Your Honor goes to statute, it's -- there
22 is no argument rebutting the application or nonapplication of
23 Section 362.

24 THE COURT: Well, let me ask you this.

25 MR. GLENN: This is not an action against the debtor.

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1 THE COURT: Yes, but what that's -- 362(a), that's
2 what I -- I know what Collier says, I know what the Miller
3 decision says, but 362(a)(1) includes the issuance or
4 employment of process. You've dismissed the debtors from your
5 action, and to get discovery from a third party, you have to
6 use process to do that, don't you? I mean, it's -- ordinarily
7 process is usually in the form of a subpoena; that's judicial
8 process. How is it that 362(a)(1) does not apply to the use of
9 judicial process to obtain discovery from a debtor?

10 MR. GLENN: That provision -- in our position, Your
11 Honor, that process is service of the summons or summons
12 without notice.

13 THE COURT: Is there -- do you have cases that say
14 that process doesn't include service of a subpoena?

15 MR. GLENN: Well, I think it's the implication of
16 every case that we cited in our brief, the Collier's citation
17 and --

18 THE COURT: So you would be entitled -- if it cost the
19 debtor ten million dollars to respond to your discovery, the
20 automatic stay would have no effect whatsoever. You'd be
21 entitled to that discovery and all of the twenty-seven other
22 actions that have been filed involving RMBS claims. Everybody
23 would be entitled to discovery from the debtor, whether it cost
24 ten million or a hundred million dollars, with no impact of the
25 automatic stay.

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1 MR. GLENN: That's not correct, because every other --

2 THE COURT: Isn't that the implication of your --

3 MR. GLENN: No. No, it's not, Your Honor.

4 THE COURT: Why not?

5 MR. GLENN: Because the implication is that in those
6 circumstances the Court could issue a 105 injunction against
7 everybody else. If the SEC came in and said, we want to do --
8 we're giving the company a Wells notice for civil penalties, so
9 we're not even talking about police power, they would have to
10 produce those documents.

11 THE COURT: That is a police power.

12 MR. GLENN: I'm not sure about that, Your Honor. And
13 that goes to my second argument. We have the ability to issue
14 these subpoenas under our conservatorship statute, okay, and --

15 THE COURT: Well, you're not proceeding with your
16 action as part of police power. You're trying to recover
17 damages.

18 MR. GLENN: At this point, that's correct. But we do
19 have that power under the statute, just like any other entity
20 that is policing and governing interstate commerce like this.

21 In any event, there's no argument at all on subsection
22 3, that this is an act to obtain possession of property of the
23 estate. We're asking for copies. And I think that while Your
24 Honor's concerns are well-taken if it were ten million dollars,
25 we're not here to impose a ten million dollar expense on the

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1 company. We're here because we are subject to a court-ordered
2 schedule by Judge Cote to obtain these documents; she's noted
3 that it's important information, that it spans across a
4 multitude of parties in a complex litigation that she's trying
5 to orchestrate in tandem in the interest of judicial economy.

6 Unless Your Honor has any questions, I would reserve
7 for reply.

8 THE COURT: Okay, Mr. Glenn, thank you.

9 MR. GLENN: Thank you.

10 MR. HAIMS: Joel Haims from Morrison & Foerster,
11 counsel for the debtors. Your Honor, I'd just like to respond
12 to a few of the points that Mr. Glenn made.

13 THE COURT: Why does the automatic stay apply,
14 Mr. Haims?

15 MR. HAIMS: Why does the automatic --

16 THE COURT: Yes.

17 MR. HAIMS: Well, we think this is -- we cite John
18 Mansville (sic) for the proposition that it does apply,
19 particularly in this context. We --

20 THE COURT: Mr. Glenn says it's distinguishable
21 because 105 applied in that case.

22 MR. HAIMS: Well, we disagree that this is not an
23 action against the debtor, for several reasons; one is that
24 he's civilly stated he intends to pursue a claim against the
25 debtor and will use these documents, and these are going to be

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1 produced at some point anyway, so let's produce them now; we'll
2 use them against the debtors later. And by pursuing the claims
3 against the nonaffiliated debtors in that case, there are
4 indemnification claims and there are shared insurance
5 coverages, so they're one and the same.

6 Just to respond to several of his points, one is
7 floodgates will open here; they have to open here. And this is
8 not only about 5,000 loans, as I mentioned. We've been told
9 that the defendants in that case -- and I believe some of the
10 defendants are here to address this -- disagree with the FHFA
11 sampling model and methodology. And to the extent that they
12 get 5,000 loans, the defendants are going to need loans to
13 defend that case; it is in the debtors' interest to give them
14 the loans to defend that case. And so this can't be a one-way
15 street. This can't be just about 5,000 loans to the FHFA and a
16 100,000 dollar cost. It has to be both ways. And so that's
17 going to be some multiple of that, and I don't even know what
18 the defendants are going to want. There has been some mention
19 of all of the loan files, but we haven't gotten formal numbers
20 from either of the parties. We just got the FHFA's in their
21 reply brief and we haven't heard any definitive numbers from
22 the defendants.

23 Second, 100,000 dollars is still a significant sum.
24 The debtors should not bear the cost of that, shouldn't bear
25 the cost of it particularly since the documents are going to be

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1 used against the debtors to file a claim against the debtors.

2 Somebody should bear it; shouldn't be the debtors.

3 And lastly, this is a motion to lift the stay. Sonnax
4 factors apply, and we go through them in our briefs; I'm not
5 going to reply to them now. But the only basis they gave to
6 lift the stay is that Judge Cote says they should come here.
7 They have a case before Judge Cote, and these documents will be
8 useful in their case before Judge Cote, and frankly that's just
9 enough under the Sonnax test to lift the stay here.

10 If Your Honor has any further questions, I'll --

11 THE COURT: I do.

12 MR. HAIMS: Oh, sure.

13 THE COURT: I do.

14 First let me ask, Mr. Glenn, has somebody found that
15 transcript from Judge Cote?

16 MR. GLENN: Your Honor, we can bring this to you.

17 It's in July 19th -- 20, just -- sure.

18 MR. FLIMAN: Your Honor, Daniel Fliman of Kasowitz
19 Benson. Judge Cote's direction regarding the loan files is
20 quoted at paragraph 4 of her supplemental motion, and that was
21 in her July 17th status conference.

22 MR. GLENN: Would you like us to bring you a copy of
23 that?

24 THE COURT: Do you have a copy? I mean, I've got
25 three tons of paper --

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1 MR. GLENN: Okay. Let's bring him --

2 THE COURT: -- here. If you could just bring me that.

3 MR. GLENN: Sure.

4 THE COURT: I would appreciate seeing it.

5 MR. FLIMAN: Your Honor, I could just give you the
6 relevant pages of the supplemental, or --

7 THE COURT: Sure.

8 MR. FLIMAN: -- would you like the entire --

9 THE COURT: No, I'd just like to see the relevant
10 pages.

11 MR. GLENN: Here, hand him this as far as the
12 transcripts.

13 THE COURT: Just identify for the record what it is
14 you're showing, so everybody knows what I'm looking at.

15 Unless somebody objects, I don't know that I need to
16 see the whole -- I'd like to see, obviously, the relevant
17 portion, but --

18 MR. FLIMAN: Your Honor, I'm going to hand up a copy
19 of the transcript from the July 17th status conference in front
20 of Judge Cote.

21 THE COURT: Okay. Okay, and you had turned over at
22 page 24. Is that --

23 MR. FLIMAN: Yes, Your Honor.

24 THE COURT: -- where you wanted me to look?

25 MR. FLIMAN: The relevant excerpt is at page 24;

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1 starts at line 9.

2 THE COURT: Okay, let me just read it to myself.

3 (Pause)

4 THE COURT: I'm starting to read at line 3 on page 24.

5 Okay, I can give you back your transcript. Thank you
6 very much.

7 MR. GLENN: Your Honor, just so the record's clear --

8 THE COURT: Go ahead, Mr. Glenn.

9 MR. GLENN: -- Mr. Haims indicated other defendants'
10 positions and the like; that's not in the record and we object
11 to any argument by parties who did not file papers in this case
12 or in reference thereto.

13 THE COURT: All right.

14 Mr. Haims, let me ask you some questions. Before
15 Judge Cote, one of the issues that FHFA raised that she didn't
16 decide was the issue of whether Ally has, "control" of the
17 tapes; that would be true of the loan files as well. And there
18 were two letters -- one from Kasowitz to Judge Cote and one
19 from, I think, Mayer Brown to Judge Cote -- that addressed the
20 issue. Could you point to me -- are there provisions of the
21 shared services agreement that address whether ResCap has
22 contractually agreed to provide loan files to Ally if it
23 requests them?

24 MR. HAIMS: We weren't parties to that briefing. I
25 happened to have gotten copies of those letters. But --

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1 THE COURT: Okay, I mean, I got the shared services --

2 MR. HAIMS: Right, so --

3 THE COURT: -- agreement here, but --

4 MR. HAIMS: Our --

5 THE COURT: Is there somebody who can address this
6 issue?

7 MR. HAIMS: Well, our posi --

8 THE COURT: Look. I mean, here -- before you go on,
9 Mr. Haims, I'll decide what I need to decide. But you've
10 raised the issue about cost, and one of the issues that was
11 addressed in those two letters -- the Kasowitz letter, the
12 Mayer Brown letter -- dealt with cost.

13 I pulled the shared services agreement and also, I
14 guess it's Schedule C2, pricing for ResCap services, and I
15 confess I don't understand it. So the Kasowitz letter pointed
16 to language which they specifically said obligated ResCap to
17 respond to Ally request for documents, like the loan files.
18 And then what I'm trying to -- it didn't specifically address,
19 when I look at the ResCap -- the pricing for ResCap services,
20 whether ResCap and Ally have contractually agreed that if
21 ResCap must pull and provide this information to Ally or at
22 Ally's request, whether ResCap can charge Ally for doing that.

23 MR. HAIMS: My understanding of this, and I can only
24 speak on behalf of ResCap's --

25 THE COURT: Is there somebody here who can talk about

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1 this? I apologize --

2 MR. HAIMS: Yeah --

3 THE COURT: Go ahead and tell me what you can, first.

4 MR. HAIMS: -- is that the shared-service agreement
5 relates to shared services to run the businesses, that there is
6 no provision in the shared-service agreement that specifically
7 deals with third-party discovery and a pending securities
8 litigation such as this, and that --

9 THE COURT: No, but let's get to the point. The
10 defendants before Judge Cote are, I don't know, nondebtor Ally
11 entities; I don't know which one or whether it's AFI or what.

12 MR. HAIMS: It's several of them.

13 THE COURT: Okay, all right. And she didn't resolve
14 this issue of "control". And I'm prepared to decide what I
15 need to decide, but I'm just -- if FHFA is entitled to the
16 documents from Ally, and your position before Judge Cote was
17 these documents are in the possession of ResCap, not Ally.
18 Okay. The issue may become whether Ally has the ability to
19 obtain the documents from ResCap. And so my question is, what
20 does the shared services agreement provide with respect to
21 whether ResCap would have to respond if -- to Ally asking for
22 the loan files, 5,000 loan files, and who pays for it? Because
23 you say --

24 MR. HAIMS: My understanding --

25 THE COURT: Let me finish. You say the cost would be

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1 a lot, okay, and I've got the debtors before me. Judge Cote
2 withdrew the reference with respect to extending the stay to
3 the nondebtors, and she said no. Okay.

4 MR. HAIMS: Right.

5 THE COURT: Now I'm focusing on the discovery issue.
6 So tell me what in the shared services agreement specifically
7 addresses it, and tell me whether anything in the pricing of
8 services specifically says whether Ally has to pay for it.

9 MR. HAIMS: I don't think it does, but the debtors'
10 position on this motion is that the debtors shouldn't be
11 required to pay for this discovery. And whether it's the FHFA
12 or some other party, that the --

13 THE COURT: I know; that's why I'm asking --

14 MR. HAIMS: Right.

15 THE COURT: -- the question whether --

16 MR. HAIMS: So --

17 THE COURT: -- Ally is required to pay for it.

18 MR. HAIMS: That's an issue that's not here. There is
19 a litigation provision in the shared services agreement that --

20 THE COURT: Point it to me.

21 MR. HAIMS: Huh?

22 THE COURT: Point it out to me. You know --

23 MR. HAIMS: I don't have that.

24 THE COURT: Can somebody help me on this?

25 MR. HAIMS: Could I just consult for a second?

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1 THE COURT: Yes, go ahead.

2 (Pause)

3 MR. HAIMS: Your Honor, my partner Gary Lee knows more
4 about the shared services agreement than I.

5 THE COURT: Okay. Let me just find something.

6 So what -- just so we're all on the same page, what I
7 was referring to was attached to Ms. Leung's -- maybe I'm
8 mispronouncing it; I apologize if I am -- declaration, which is
9 ECF docket number 808 -- it's her declaration dated July 17,
10 2012 -- Exhibit H was the July 2 letter to Judge Cote from
11 Kasowitz, and Exhibit I is the July 6 response from Mayer
12 Brown. And the Kasowitz letter refers to the decision in In re
13 NTL, Inc. Securities Litigation, 244 F.R.D. 179 (S.D.N.Y.
14 2007). I actually have the decision on this issue as well: In
15 re Lozano, L-O-Z-A-N-O -- it's a published decision; but it's
16 August 13, 2008 -- and I fairly extensively review the issue of
17 possession, custody or control, what does control mean. And
18 what I said there and what I understood the law to be: that by
19 contract if somebody has the right to obtain the documents,
20 that satisfies the test for control. So I come back to the
21 issue, Mr. Lee, of what does the shared services agreement
22 provide, specifically with respect to ResCap providing
23 documents to Ally, and does it provide who pays for it?

24 MR. LEE: Sorry. Good afternoon -- or good morning,
25 Your Honor. Gary Lee from Morrison & Foerster --

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1 THE COURT: Five more minutes we're here --

2 MR. LEE: -- for the debtors.

3 THE COURT: Five more minutes of morning --

4 MR. LEE: I'll speak slowly.

5 THE COURT: Okay.

6 MR. LEE: No filibust -- Your Honor, I was actually
7 involved in drafting and negotiating the shared services
8 agreement.

9 THE COURT: Just tell me what it says, not what --

10 MR. LEE: And the answer to your question --

11 THE COURT: -- what the negotiations were.

12 MR. LEE: -- Your Honor, in section 8.2 of the
13 agreement deals with ownership of the documents.

14 THE COURT: Okay.

15 MR. LEE: And this remains a very heavily discussed
16 issue with AFI. The reason it's heavily discussed is because
17 these provisions were negotiated so that we could transfer to
18 Nationstar --

19 THE COURT: Yes.

20 MR. LEE: -- the relevant loan files and loan
21 information as part of what ResCap, the debtor, owns and what
22 ResCap, the debtor, can transfer to a third party. So I think
23 that what is getting mixed up here -- this is definitely a case
24 of apples and oranges. The materials relating to the private-
25 label securitizations, that information, the ongoing servicing

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1 rights are property of the debtor, Your Honor. All of the
2 information belongs to the debtor; it's what we're transferring
3 to Nationstar, Your Honor.

4 Separate and apart from that, what the purpose of the
5 shared services agreement was for the ongoing provision of
6 services as opposed to production of documents as between the
7 parties, so that we could continue to run our business --

8 THE COURT: I understand, but --

9 MR. LEE: -- from a data perspective.

10 THE COURT: -- it did specific --

11 MR. LEE: Yeah.

12 THE COURT: It did -- show me where the -- there is
13 language about litigation.

14 MR. LEE: There is language about --

15 THE COURT: Where is that?

16 MR. LEE: -- litigation, Your Honor, yes.

17 THE COURT: You know what, Ms. Leung's declaration, or
18 the letter, rather -- on the first page of the letter, the last
19 paragraph, it's got a quote: "ResCap will provide", and then
20 there's an ellipsis, "when requested by AFI and consistent" --
21 and then the citation was not to the exhibit -- not to the
22 shared-service agreement, so I couldn't find where that
23 language is. That's what I'm looking for.

24 MR. LEE: And, Your Honor, I'm not sure, unless
25 there's a specific schedule to the shared services agreement

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1 for provision of it, that there is anything. I think the
2 difficulty here, Your Honor, is AFI's free to request whatever
3 it wants. Unless there's a work order, we can or can't agree.
4 But our position, Your Honor, is the data belongs to us.

5 THE COURT: I don't -- whether the data belongs to you
6 or not doesn't seem to me to be the controlling issue. I mean,
7 if you've agreed -- if you've contractually agreed to provide
8 data or information to Ally, that's what I'd like to know,
9 where that is. I couldn't find it when I looked at the
10 Kasowitz letter, okay. I saw the quote, and then for whatever
11 reason, I then couldn't find where it came from.

12 MR. LEE: I'm going to have to --

13 THE COURT: Hold on.

14 MR. LEE: -- look for a statement of work, Your Honor.
15 Yeah.

16 THE COURT: Okay. And so -- but I see this as very
17 pertinent to the issue before me. Mr. Haims is raising the
18 issue about that ResCap shouldn't have to pay to produce loan
19 files. Okay. You've put that matter in issue. I know you say
20 that FHFA should have to pay for it, but Judge Cote seems to
21 think that getting those documents is important to the
22 litigation. It's one thing if the debtor has to pay to do it,
23 and it's another if the debtor doesn't have to pay to do it.
24 If there's a contractual agreement by which ResCap agreed it
25 would provide those services to Ally, and if the pricing

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1 schedule says who pays for it or how it's paid for, that's what
2 I want to know.

3 MR. LEE: Your Honor, if you'll bear with us, I'm
4 going to take a look at the statements of work, because I'm not
5 sure whether there's anything beyond cooperation as opposed to
6 the specific provision of loan files, and I want to be quite
7 accurate in --

8 THE COURT: Let me find out from Mr. Glenn.

9 Where'd the language in the letter come from?

10 MR. GLENN: That's from the statement of work, Your
11 Honor. It's not from the motion. It's page 20 and 21 of the
12 statement of work. And I apologize for that ambiguity.

13 THE COURT: Where is the -- you know, what I did --

14 MR. GLENN: But, Your Honor, maybe --

15 THE COURT: There's so much stuff.

16 MR. GLENN: May I --

17 THE COURT: I printed out the shared services
18 agreement. I didn't print out the statement of work.

19 MR. GLENN: May I suggest that we pause, maybe put
20 this to the end of the calendar, which I understand is not
21 going to take all that long, so we can present this to Your
22 Honor in a more organized fashion and confer with each other?

23 THE COURT: Well, here's what we're going to do.

24 MR. GLENN: Okay.

25 THE COURT: The Court concludes that FHFA's motion to

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1 lift the automatic stay and the debtors' response thereto raise
2 a contested matter. And under Local Rule 9014-1, the first
3 hearing on a contested matter is not an evidentiary hearing.
4 Consequently, the Court, considering this under, now, 362(e) --
5 this is a preliminary hearing on the motion to lift the stay --
6 I've concluded that this is a contested matter and an
7 evidentiary hearing will be required. I'm going to set the
8 evidentiary hearing for Tuesday, September 11th, 2012 at 2 p.m.
9 September 11th is a ResCap omnibus hearing day. The stay will
10 remain in place pending the conclusion of the final hearing.
11 The Court concludes that there is a reasonable likelihood that
12 the debtor, which is opposing relief from the stay, will
13 prevail at the conclusion of such final hearing.

14 September 11th is within thirty days of the date of
15 this preliminary hearing, and therefore satisfies 362(e).

16 On or before 5 p.m., Tuesday, August 28th, the parties
17 shall file supplemental memoranda of law and any supporting
18 declarations and exhibits addressing whether ResCap is required
19 under the shared services agreement and statement of work and
20 any other exhibits to it to provide loan files to Ally, and who
21 pays for it, and how is it determined at what price it'll be
22 paid for.

23 The debtor has specifically raised today the
24 issue -- and we're not going to revisit the issue as to the
25 loan tapes and the origination information; you say you've

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1 resolved that. So the only issue before the Court is the loan
2 file. Some number. As I understand it, in principal FHFA has
3 agreed to 5,000 loan files; the debtor has argued that that's
4 all well and good, but the defendants are going to want more.
5 I want supplemental evidence with respect to the burden and
6 cost that the debtor will incur if the stay is lifted and
7 discovery of the information requested by FHA (sic) is ordered
8 to be conducted. I want to know how long it will take.

9 The only thing I have before me now, Mr. Lee, is their
10 request for 5,000 files.

11 And I assume that, Mr. Glenn, you will identify which
12 5,000 files you want. Am I correct?

13 MR. GLENN: Yes, Your Honor. I'm not sure if it'll be
14 by that date, but -- we have to confer with our experts.

15 THE COURT: Okay. But the parties should confer so
16 that -- sooner than these supplemental filings. I want to know
17 what is it that they want. I want you to specifically address
18 what the burden -- how much time it would take, of what
19 personnel, what you project the cost of that to be. The
20 supplemental declarations need to be filed by that October 20
21 (sic) -- it's not October -- August 28th date. If FHFA wishes
22 to take the deposition of the declarants, you can do that, Mr.
23 Glenn, confer with the debtors' counsel with respect to that.
24 Okay. But that's how we're going to proceed on the issue of
25 production of these documents to FHFA.

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1 Okay. Anything else specifically with respect to the
2 directions I've given?

3 MS. MOSKOWITZ: Yes, Your Honor. If I may?

4 THE COURT: Come on up.

5 MR. LEE: Your Honor, may I -- we have a call from the
6 Department of Justice that I've just been told I need to --

7 THE COURT: Okay. You're excused.

8 MR. LEE: Thank you, Your Honor.

9 THE COURT: Blame them for your being late -- me.
10 Blame me for you being late.

11 MR. LEE: Thank you, Your Honor. I will.

12 THE COURT: Okay. Go ahead, Mr. Lee. Go ahead.

13 MS. MOSKOWITZ: Good afternoon, Your Honor. My name
14 is Lauren Moskowitz, I'm at Cravath, Swaine & Moore. I
15 represent Credit Suisse in the FHFA actions. I'm also here to
16 speak for the other non-Ally related underwriters that are
17 defendants in that case, including Barclays, Citigroup, Goldman
18 Sachs, UBS, RBS and J.P. Morgan.

19 And Your Honor, just to -- it has been alluded to what
20 the other defendants may need in the FHFA v. Ally action. And
21 it is correct that we are not prepared to live by the 5,000
22 sample that the FHFA has reduced their request for today and in
23 their reply papers. And so I appreciate the opportunity to
24 just be heard briefly on that issue.

25 To put it in context, Judge Cote was presented with a

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1 motion -- or a submission by FHFA a couple months ago to
2 restrict discovery in all of the FHFA actions to a sample of
3 loans. Judge Cote rejected that in the face of due process and
4 Seventh Amendment concerns raised by the defendants. We also
5 put in expert affidavits explaining why our burdens, not to
6 mention plaintiff's burdens, may not be able to be carried with
7 that sample that they propose. So in light of all of that,
8 Judge Cote said that all the loan files are in play and that
9 the parties should go out and get them.

10 That is what we thought was happening, Your Honor,
11 here, when the FHFA brought its motion and would be seeking
12 the -- more than a sample of loan files. We saw in the reply
13 that that's no longer the case. And in effect, we feel that
14 FHFA is making an end run around Judge Cote's order that she
15 would not be restricting discovery in these cases. So to the
16 extent that Your Honor is hearing further proceedings, we would
17 like to be heard on why 5,000 is not the proper amount of
18 loans.

19 THE COURT: That's fine, Ms. Moskowitz. But that same
20 August 28th deadline for additional submissions applies to you
21 or anyone else who's going to take a position. I want to see
22 all of those briefs and any declarations in support of your
23 position at that time, okay?

24 MS. MOSKOWITZ: Yes, Your Honor. Thank you, Your
25 Honor.

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1 THE COURT: Thank you very much.

2 MR. WARE: Your Honor, Michael Ware of Mayer Brown for
3 Ally Financial. I don't represent them here, but I do
4 represent them in the FHFA case.

5 THE COURT: Were you the author of the letter?

6 MR. WARE: A partner of mine was the author of that
7 letter. So that's Reg Goeke who submitted the letter. And we
8 will also -- we didn't participate in this motion practice
9 until the reply introduced the concept of a sample. And
10 there's enough data out there for them to pick a really good
11 sample. They know enough already to pick the 5,000 losers;
12 you'd think every loan was a bummer. But we would also like
13 to --

14 THE COURT: The same deadline applies to anybody.

15 MR. WARE: Thank you, Your Honor.

16 THE COURT: Oh, and let me just make clear. There's a
17 twenty-five-page limit on any memoranda of law. It doesn't
18 apply -- even that --

19 MR. WARE: We can make our point more quickly than
20 that.

21 THE COURT: -- that seems awfully long to me, but
22 that's my normal limit. Okay.

23 MR. WARE: Thank you, Your Honor.

24 THE COURT: It doesn't apply to declarations; it
25 applies to the memoranda of law.

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1 Anybody else want to be heard?

2 MS. JACKSON: Your Honor, may I say three things?

3 THE COURT: No. This only relates to this matter, Ms.
4 Jackson, okay?

5 MS. JACKSON: Okay.

6 THE COURT: And I don't think you've got any standing
7 to be heard on this specific matter.

8 MS. JACKSON: Oh. Okay.

9 THE COURT: Okay. Mr. Haim, is there anything else?

10 Mr. Rosenbaum, anything?

11 MR. HAIMS: Nothing from me, Your Honor.

12 MR. ROSENBAUM: Thank you, Your Honor.

13 THE COURT: All right. We're adjourned.

14 Oh. Hang on just one second.

15 MR. ROSENBAUM: Sorry, Your Honor.

16 THE COURT: Mr. Rosenbaum, are there other matters on
17 the calendar?

18 MR. ROSENBAUM: There's a status conference --

19 THE COURT: Okay. Well, let's --

20 MR. ROSENBAUM: -- and two more motions.

21 THE COURT: All right. That's what I was trying to
22 understand. Let's go. Much as I'd like to be over, I want to
23 get everything done.

24 MR. ROSENBAUM: Hopefully not too much longer, Your
25 Honor.

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1 The next motion is -- it's number 7 on the agenda,
2 page 8. It's the motion of OneWest Bank for order pursuant to
3 Bankruptcy Rule 2004 --

4 THE COURT: Right. The 2004.

5 MR. ROSENBAUM: And I believe they're either
6 telephonic or in the courtroom.

7 THE COURT: All right. Is anyone present for OneWest?

8 MR. O'NEAL: Good morning, Judge. John Maston O'Neal
9 appearing telephonically for OneWest Bank.

10 THE COURT: All right. Go ahead.

11 MR. O'NEAL: Thank you, Judge.

12 The facts on this are relatively straightforward. In
13 of September 2005, a bank known as IndiMac Bank made a 640,000-
14 dollar loan to Myra Hernandez (ph.). That money was used to
15 refinance and pay off a primary first position loan by
16 Citibank, and then a second position home equity line of credit
17 with Homecomings Financial. And as you might expect, the loan
18 was made with the expectation that it would receive a first
19 position mortgage or an Arizona deed of trust to secure the
20 debt.

21 Unfortunately, the mortgage lien or the deed of trust
22 that was held by Homecomings Financial was not released, and we
23 don't know why. But what we do know that happened is that
24 in 2011, Homecomings, I think, sold the loan to another entity
25 called EZ Financial, which then proceeded with a foreclosure

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1 and then used Homecomings Financial's first position deed of
2 trust to wipe out OneWest's deed of trust, and then thereby
3 depriving OneWest of its rights in the collateral. And Judge,
4 Arizona is an anti-deficiency state, which means that OneWest
5 can't collect on the debt, at least from the borrower. It's
6 limited to its rights in collateral, and so therefore, it was
7 left without a remedy on the loan.

8 We were hired to try to track down and figure out
9 exactly how that happened, and the bottom line is it's usually
10 one of two things: either A, Homecomings received full payoff,
11 but then failed, pursuant to a request and/or its policies, to
12 close the line of credit, allowed the borrower to run up
13 additional debt and then sought to collect it; or, there was
14 some mistake on the part of the escrow company, who tendered
15 the payoff in the sense that perhaps they didn't give the full
16 amount.

17 So to try to get to the bottom of this and to
18 determine whether, in fact, there is a claim in this case
19 against the debtor, we served very narrow 2004 requests asking
20 for precise and what we thought, Judge, were not overburdensome
21 documents. The correspondence related to this particular loan,
22 what I have seen in the past are like servicing notes or call
23 log notes or computer entries showing what was done; a payment
24 history, which would show how much was owed at a particular
25 time, and most importantly, what was owed at the time that the

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1 refinancing money was paid; e-mails for a very limited period
2 of time, Judge, related to the time period within which this
3 loan was paid off; and then last, Judge, documents related to
4 the sale of this particular loan to the entity that ultimately
5 foreclosed out OneWest.

6 And we're asking for this, Judge, because we're trying
7 to do a cost-effective assessment of whether OneWest is going
8 to be appearing in this case as a creditor making a proof of
9 claim or whether it's going to go elsewhere, because as I noted
10 before, if the records show that Homecomings didn't receive
11 payment in full, that's one issue and you probably won't be
12 hearing about OneWest Bank in this matter again. On the other
13 hand, if there was something in the fall-through, then we would
14 be making a claim.

15 Prior to having this motion set for hearing before you
16 we had, I thought, productive conversations with the debtors'
17 counsel. And, of course, he can correct me or she can correct
18 me if I'm wrong, but I believe that we settled on a couple
19 points, which is, it really wasn't that terribly burdensome to
20 print out a payment history or to obtain some sort of imaged
21 information related to correspondence -- the typical things
22 that you know would be maintained in a servicer related to a
23 loan and the job that they do.

24 Where we really boiled down to a disagreement was the
25 burden associated with searching for e-mails, a request by my

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1 client for policies and procedures and places to what to do if
2 and when the payoff was received, Judge, and then a deposition.
3 With respect to the deposition, Judge, I don't need that; it
4 was only noticed for purposes of establishing custodian of
5 records, and I'll withdraw that without prejudice. So what
6 we're really left with, at least as I understand it, are
7 e-mails and policies and procedures.

8 On the policies and procedures, it was my
9 assumption -- and I didn't see anything contrary in the
10 objection to the request -- that A, they exist, and number two,
11 they're probably in some sort of condensed form located
12 somewhere and that short of just trying to find out where they
13 are and copy, that would be the extent of the burden. With
14 respect to e-mails, I did ask how difficult was it; I don't
15 think we ever got a full answer, and my review of the Scoliard
16 declaration doesn't tell me either.

17 But to be clear, I'm not asking the debtors to engage
18 in what I would call the classic search every corner for
19 e-mails, to lock down laptops and freeze hard drives and that
20 sort of thing. I would highly doubt that information related
21 to this payoff would be found in any such a location. All I'm
22 looking for are those that would be normally kept by the
23 company on its particular servers, if they even exist, for a
24 very limited time period -- that is, the time frame within
25 which the payoff was received, and Judge, the time frame within

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1 which the loan was sold.

2 And it's important, Judge, that we get this
3 information now because, as I noted before and as we say in our
4 reply, otherwise we're going to be struggling along for years,
5 then be making the same potential claims later when it's time
6 to look at proof of claims. And if I get it now, and in fact I
7 find out that hey, listen, there just simply isn't a claim
8 against the debtor, everybody wins. The debtor doesn't have to
9 deal with OneWest or me in the future; we go away and that's
10 the end of it.

11 And to close, Judge, I candidly find it somewhat
12 difficult to believe that pulling these limited documents
13 related to one loan -- which is really the essence of the
14 business of the debtor -- is so unduly burdensome that that
15 task was outweighed -- or it outweighs the effort that's being
16 put in to resist the request. And with that, Judge, I'll
17 answer any questions, of course, that you have.

18 THE COURT: Mr. Rosenbaum?

19 MR. ROSENBAUM: Thank you, Your Honor.

20 Your Honor, I frankly don't think what was discussed
21 among counsel is terribly relevant to this motion right now.
22 And it's an interesting pattern. We started out with a two-
23 page motion, and then only after we went through the burden
24 that they criticized to respond to a two-page motion, and then
25 we learned more about it in our response, and now we're

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1 learning more about the scope of the request. I think what we
2 should look at is what the request is. I think it's very
3 clear. I guess there's no dispute --

4 THE COURT: Let me interrupt you. Have you pulled the
5 loan history?

6 MR. ROSENBAUM: We pulled the loan file, Your Honor.

7 THE COURT: You have?

8 MR. ROSENBAUM: Yes.

9 THE COURT: Does it show the payoff?

10 MR. ROSENBAUM: I don't know, Your -- I don't have
11 that information, Your Honor.

12 THE COURT: So you have the loan file?

13 MR. ROSENBAUM: We have the loan file. And if we
14 offered to the movant to produce the loan file in resolution of
15 this motion, and they could take the loan file, look at it
16 without reservation of rights, if they want to come back to
17 this Court they could do so. That's what we offer.

18 THE COURT: Well, here's what -- is there -- you say
19 you have the loan file. Have you searched whether there is an
20 electronic record of the loan payment history --

21 MR. ROSENBAUM: No.

22 THE COURT: -- which ordinarily -- just let me finish.

23 MR. ROSENBAUM: Sorry.

24 THE COURT: Because ordinarily that is not a difficult
25 thing to do. Okay. What it'll show, I don't know, but

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1 somebody -- if you've got a loan number you can put that in, in
2 your data systems, and you can pull the electronic record and
3 the payment history. Has that been done?

4 MR. ROSENBAUM: I'd have to confer with counsel. I
5 don't know if we -- with our client representative here. I don't
6 know if that was done or not.

7 THE COURT: Could you do that?

8 MR. ROSENBAUM: Right now, Your Honor?

9 THE COURT: Yeah.

10 MR. ROSENBAUM: Sure.

11 Your Honor, we pulled and do have the payment history.

12 THE COURT: Okay. I'm going to deny the motion of
13 OneWest Bank for an order pursuant to Bankruptcy Rule 2004
14 authorizing the examination of Homecomings Financial, LLC,
15 except to the extent of directing that the debtors provide
16 OneWest Bank's counsel with a copy of the loan file and of the
17 elec -- what would you refer to this printout that you have?

18 Go ahead, confer.

19 MR. ROSENBAUM: Payment history can get produced from
20 accessing other data. It's one form.

21 THE COURT: All right. So I'm going to direct that
22 the debtor produce the loan file and the payment history. And
23 the motion for the 2004 examination is denied in all other
24 respects. With respect to -- they're obviously -- since you've
25 already pulled the loan file and the payment history, there's

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1 no burden associated with producing it. With respect to the
2 e-mails, I definitely will not -- I'm not authorizing any
3 examination beyond what I'm ordering produced. It is clear to
4 the Court that the burden of searching e-mail records, given
5 the dates of the issues -- the refinancing occurred in
6 September 2, 2005 -- would require searching archives, backup
7 tapes and many other records, so I'm definitely not going to
8 order or permit a 2004 examination.

9 2004 is principally designed to allowed parties-in-
10 interest to identify assets of a debtor to see whether there's
11 anything that should be recovered for the debtor. It's not
12 intended for use for obtaining pre-complaint or pre-claim
13 discovery, as it appears to be used here. Hopefully, by
14 providing the information that you have available it will
15 enlighten OneWest Bank as to what its situation is. If it
16 believes it can -- that that's sufficient to file a proof of
17 claim, it'll do so. If a proof of claim is filed and it
18 becomes a contested matter if the debtor subsequently objects,
19 the Federal Rules of Civil Procedure on discovery will apply to
20 it.

21 So that'll be the Court's determination. So the
22 motion is denied, except as I've otherwise indicated.

23 MR. ROSENBAUM: Thank you, Your Honor.

24 THE COURT: All right.

25 MR. O'NEAL: Thank you, Judge.

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1 THE COURT: Thank you.

2 MR. ROSENBAUM: Your Honor, the next matter on is Ms.
3 Wendy Nora's motion for reconsideration. It's item number 8 on
4 the docket.

5 THE COURT: All right.

6 MR. ROSENBAUM: This was docket no. 916. And I will
7 cede the podium to Erica Richards of my office.

8 THE COURT: Local Rule 9023-1 of the Southern District
9 Bankruptcy Court provides in part "no oral arguments shall be
10 heard unless the Court grants the motion and specifically
11 orders that the matter be reargued orally". I do not intend to
12 hear argument on Ms. Nora's current motion; the Court will
13 resolve it in a written order.

14 MR. ROSENBAUM: Thank you, Your Honor.

15 The last matter -- I believe the last matter -- let me
16 check, Your Honor.

17 THE COURT: Status conference on Green Planet?

18 MR. ROSENBAUM: That should be the last matter on,
19 Your Honor. I will confer with counsel. Would you like me to
20 give the status?

21 THE COURT: All the counsel should make an appearance
22 just so we have a complete record of it, okay?

23 MR. ROSENBAUM: Sorry.

24 MR. MARDER: Good afternoon, Your Honor. Scott Marder
25 with Duane Morris on behalf of the movant, Green Planet.

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1 THE COURT: Thank you.

2 Okay, Mr. Rosenbaum?

3 MR. ROSENBAUM: Thank you, Your Honor.

4 Your Honor, we've been in -- GMAC has been in
5 discussions with Green Planet for several weeks. In fact,
6 discussions actually preceded the filing of the motion for
7 relief and the related adversary proceeding. We have made
8 significant progress in negotiating a stipulation under which
9 GMAC would consent to the relief under specific terms.

10 Part of the issue here is it's actually when the
11 servicing agreement is terminated these loans have to be
12 transferred. There is in excess of 30,000 loans. The parties
13 have been negotiating, in addition to the terms of the
14 stipulation, the process by which those loans would get
15 transferred. We have been in negotiations to come to an
16 acceptable mechanism to transfer those loans.

17 We're working to get to that resolution; we have not
18 reached that resolution yet. We continue to have those
19 discussions, and we'll continue to do so. I'm cautiously
20 optimistic we will get there, but we don't know for certain.
21 My recommendation would be that we adjourn this to the next
22 omnibus hearing date. If we can't come to a resolution, we
23 would advise the Court before we filed our response, which
24 would be seven days prior to August 29th.

25 MR. MARDER: Your Honor, I wish I shared the optimism

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1 of counsel, and I hope that, in fact, we have made progress.
2 But I think there is still a wide gap, and I am going to ask
3 the Court to schedule this for a hearing rather than adjourn
4 the matter. And I'd like to give the Court a little bit of
5 background on the motion.

6 Green Planet is a --

7 THE COURT: Well, it's not a motion. I have an
8 adversary proceeding that's been filed. This is a case
9 management conference in the adversary procee -- well, I
10 know -- I see you filed a motion, but the adversary proceeding
11 contends that the servicing agreement was terminated pre-
12 petition and, therefore, is not property of the estate. Am I
13 right?

14 MR. MARDER: Yes, Your Honor. In the adversary
15 proceeding.

16 THE COURT: And you think that by filing this motion
17 you're going to circumvent the requirements that apply to an
18 adversary proceeding?

19 MR. MARDER: Your Honor, we believe the Court can
20 decide this and grant the limited relief that we're asking for
21 in the motion after an evidentiary hearing. The reason for
22 that, Your Honor, is Green Planet owns the mortgage servicing
23 rights to approximately 5.2 billion dollars of loans -- the GPS
24 loan pool which you've seen referenced in the papers.

25 We believe that the servicing agreement was terminated

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1 either pre-petition because of breaches, or post-petition
2 pursuant to the terms of the document itself. If notice of
3 nonrenewal is given ninety days before the term ends, then the
4 contract ends on its own terms. And so it's our position, Your
5 Honor, whether it was pre-petition termination as a result of
6 breaches, or post-petition because of the belt-and-suspenders
7 notice, so to speak, advising there's nonrenewal, the contract
8 has terminated by its terms.

9 THE COURT: Look, let me -- here's the way you're
10 going to proceed, okay. This is very similar to the
11 circumstance I was presented in Velo Holdings v. Paymentech.
12 There's a published decision from July 18th, 2012. It was the
13 decision after trial. The trial was of the adversary
14 proceeding and of the lift stay motion. You and the debtors'
15 counsel should meet and confer and seek to agree upon a case
16 management order -- you can get a copy of the template that I
17 use for case management orders.

18 You're not going to use your lift stay motion as a way
19 to circumvent the requirements of the adversary proceeding
20 rules. The adversary proceeding tees up the issue of whether
21 the servicing agreement was terminated pre-petition, in which
22 case it wouldn't be property of the estate, or whether it
23 remains property of the estate, okay. You've tried to
24 jumpstart your argument by bringing the motion to lift the
25 stay, okay. This is exactly what I had in Velo; I scheduled a

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1 single trial for both, and I entered an opinion after the
2 trial. Hopefully you'll be able to resolve this.

3 MR. MARDER: Your Honor, I appreciate the Court's
4 position. May I turn the podium over to co-counsel because he
5 wants to address an issue with respect to the history of the
6 discussions with GMAC and where we go from here.

7 THE COURT: Go ahead. I don't want to know about
8 settlement negotiations.

9 MR. VINCEQUERRA: No. No. No, Your Honor. Certainly
10 not. I just want to address the Court's impression --

11 THE COURT: Just identify yourself.

12 MR. VINCEQUERRA: James Vincequerra from Duane Morris,
13 also for Green Planet. I want to address the Court's
14 impression that we're trying to jumpstart the adversary
15 proceeding process. That could not be further from the truth.

16 We filed the adversary proceeding and the motion for
17 relief from the stay substantially at the same time. The
18 original time for the adversary proceeding to have been
19 answered has passed. And in accordance with the request of
20 counsel for the debtor, we extended that time for thirty days
21 with the understanding that we'd be going forward on the motion
22 to lift the stay. So there was no attempt by Green Planet to
23 jumpstart any process, Your Honor. We've worked hand-in-hand
24 with the debtor to keep on the same page.

25 What has happened here, effectively, is the debtors'

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1 time to answer the lift stay motion and the time to answer the
2 complaint were roughly the same. Subsequent to the debtors'
3 request to adjourn the time to answer the adversary proceeding,
4 we granted that thirty-day extension with the understanding
5 that we would keep this date for the hearing on the motion.

6 Subsequent to that in the context of the settlement
7 discussions, counsel for the debtor requested an extension of
8 time to answer the motion. We granted that five-day extension,
9 although in looking back we probably should not have because it
10 was in violation of your court's scheduling order. The initial
11 motion was scheduled so that they would have an opportunity to
12 answer the motion within the appropriate time frame.

13 So the extension we granted them effectively gave them
14 until today -- until yesterday, I'm sorry -- to answer the
15 motion. As a result of that we said, listen, we want to get in
16 front of the judge on the motion to set a schedule for the
17 motion going forward. We share the hopes that we can get there
18 on a settlement, but right now we're in a position where we
19 followed the Court's directions with the scheduling order, we
20 tried to accommodate the debtors' requests for extra time in
21 the context of settlement, but we don't want to lose any more
22 time. So we're in a funny position where would like to
23 accelerate the time now to answer our motion and move forward
24 with the hope and understanding that we can get there on
25 settlement.

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1 THE COURT: Mr. Rosenbaum?

2 I'm telling you right now, I'm not going to hear the
3 lift stay motion separate from the adversary proceeding. You
4 filed the adversary proceeding. You filed it before you filed
5 a lift stay motion, okay. You're trying -- the adversary
6 complaint is designed to test this issue of whether the
7 servicing agreement is property of the estate.

8 Mr. Rosenbaum.

9 MR. ROSENBAUM: Your Honor, we're prepared to follow
10 the Court's direction on conferring and scheduling a trial and
11 a proper response. And we would respond simultan --

12 THE COURT: Don't think you're going to put off --
13 look, they filed a motion to lift the stay, and I'm not
14 relieving you of your obligation to respond to the motion.

15 MR. ROSENBAUM: Your Honor, we're prepared to respond
16 to the motion.

17 THE COURT: The only thing I have in front of me right
18 now is the complaint. I've read it. There's no answer that's
19 been filed. I understand -- and your motion. I've read them,
20 okay. I understand the argument they're making; I haven't seen
21 what the debtors' response to it is. Okay. I'll resolve this
22 expeditiously, but don't expect -- I'll resolve this
23 expeditiously. I want to know if there's discovery that needs
24 to be taken.

25 Are there disputed issues about whether the servicing

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1 agreement terminated because of material breach? Is this an
2 issue that I had in Velo about whether the contract had a
3 conditional limitation such that the passage of time --

4 MR. ROSENBAUM: Your Honor, I think these are all
5 relevant issues, and I think this is very similar to Velo. And
6 we would require discovery. And that's --

7 THE COURT: Well, then there'll be expedited
8 discovery, okay.

9 MR. ROSENBAUM: That's fine, Your Honor.

10 THE COURT: You're not going to drag it out, okay?
11 You either settle it or I'm going to give you -- okay.

12 MR. MARDER: Your Honor, may I address a point --

13 THE COURT: Go ahead.

14 MR. MARDER: -- with respect to scheduling --

15 THE COURT: Yeah.

16 MR. MARDER: -- and some potential urgency here? As
17 the Court may be aware, when transferring servicing of mortgage
18 loans, there are certain dates set by Ginnie Mae upon which
19 these transfers have to take place, and if you miss it, you've
20 got to wait for the next date, and then there's notice that has
21 to be given to the borrowers as well a certain period of time
22 ahead of time. By the natural terms of the contract, it's
23 supposed to end October 1st, putting aside the allegations of
24 breach.

25 In order for us to effectuate this transfer, there is

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1 a lot of work that needs to be done between the two parties; it
2 can't be done overnight with the flip of a switch. And to the
3 extent we get closer and closer to that date, it puts borrowers
4 in jeopardy with respect to whether the transition can happen
5 in a way --

6 THE COURT: What's the date after October 1?

7 MR. MARDER: It would be the first week in November,
8 Your Honor. I don't know which day it is, though.

9 THE COURT: It's not extending it out for six months
10 or a year.

11 MR. MARDER: Your Honor --

12 THE COURT: So don't tell me that the one month --
13 what happens -- what's the prejudice you suffer if transfer of
14 the loans is delayed a month?

15 MR. MARDER: It's several respects, Your Honor.

16 Number one, the contract is supposed to end October 1st, so we
17 shouldn't have to pay another month's servicing fees, which are
18 hundreds of thousands of dollars. That's number one. Number
19 two, there are very significant allegations of breaches by
20 GMAC, where they've been soliciting the loan pool. They have
21 been foreclosing on homes when we have asked them to modify
22 loans --

23 THE COURT: You know, what this sounds like is a lot
24 of contested issues. Meet and confer, agree -- attempt to
25 agree on a schedule. If you can't, okay. The parties need to

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1 meet and confer in an effort to agree on a schedule for the
2 adversary proceeding and the lift stay motion. Both appear to
3 be contested, and discovery would appear to be required. And a
4 schedule should include a deadline for the completion of all
5 fact discovery.

6 I want -- counsel for the debtors and for Green Planet
7 need to meet and confer face-to-face this week in an effort to
8 negotiate a full case management schedule. It would be the
9 Court's intention, unless persuaded otherwise, that I will hear
10 both the adversary and the lift stay at the same time. It's
11 the same basic issue: was the servicing agreement terminated
12 pre-petition? Hopefully you'll be able to agree on a schedule
13 and submit it to the Court by 5 p.m., Tuesday, August 28th. If
14 you're not able to agree on a schedule, each side should submit
15 by that date and time their proposed schedule, and I'll decide
16 what I want to do with it. In the meantime, your time is
17 better spent trying to resolve these issues.

18 Anything else anybody wants to raise?

19 MR. ROSENBAUM: Thank you, Your Honor.

20 MR. MARDER: Your Honor, thank you for the Court's
21 time.

22 THE COURT: Okay.

23 MR. ROSENBAUM: Your Honor, unless I'm missing
24 something, and hopefully someone would correct me --

25 THE COURT: My law clerks always correct me when I

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1 miss something.

2 MR. ROSENBAUM: -- I think that concludes the agenda
3 for this morning -- or this afternoon.

4 THE COURT: All right. We're adjourned.

5 MR. ROSENBAUM: Thank you for your time, Your Honor.

6 (Whereupon these proceedings were concluded at 12:35 PM)

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2 I N D E X

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4 RULINGS

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2 C E R T I F I C A T I O N

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4 I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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Penina Wolicki

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PENINA WOLICKI

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Date: August 15, 2012

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